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In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 558

STANLEY W. TAYLOR,
Petitioner,

vs.

PAUL A. PORTER, Price Administrator, Office of Price Administration,
Respondent.

Petition for Writ of Certiorari to the United States Emergency Court of Appeals

STANLEY W. TAYLOR,
1201 Fulton St.
San Francisco (17), Calif.
Petitioner in Propria Persona.

PARKER PRINTING COMPANY, 545 SANSOME STREET, SAN FRANCISCO

Subject Index

	Page
Opinion and Proceedings Below	2
Summary and Statement of the Matter Involved	3
Summary	3
Statement of the Case	4
Statement of Basis of Jurisdiction	5
Questions Presented	6
Reasons Relied On for Granting the Writ	11
1. Certiorari should be granted to correct the injustice and denial of due process which this petitioner has suffered at the hands of the Administrator and in the Emergency Court of Appeals	11
2. Certiorari should be granted to answer the questions which were reserved in the Yakus case heretofore cited (see notes (4))	12
3. Certiorari should be granted to determine the validity of the Act and of the protested procedure thereof in actual practice and application. These are questions of widespread interest and great importance	13
4. Certiorari should be granted because the Emergency Court has clearly erred in its statement of the facts and because there appears to be a conflict between it and the Circuit Court of Appeals for the Ninth Circuit	17
5. Certiorari should be granted because petitioner has been penalized and deprived of due process by reason of the fact, that while obeying the regulation, he sought to preserve his rights thereunder by the procedure which this Court has held to be valid on its face, and because after conviction he pursued his statutory remedies	19
Conclusion	21
Appendix	i

Table of Authorities Cited

	Pages
People v. Max, 70 Colo. 100, 198 Pac. 150	14
Walker v Gilman, Washington Decisions Advance Sheets, Volume 125, No. 18, p. 520 (August 1946)	14
Yakus v. United States, 321 U. S. 414, 446, 447 (1944)	6, 7, 11, 13, 20

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No. .....

STANLEY W. TAYLOR,
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vs.

PAUL A. PORTER, Price Administrator, Office of Price Administration,
Respondent.

Petition for Writ of Certiorari to the United States Emergency Court of Appeals

To the Honorable Frederick Moore Vinson, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

Your petitioner, Stanley W. Taylor, prays that a writ of certiorari issue to review the judgment of the United States Emergency Court of Appeals in the cause entitled *Stanley W. Taylor v. Paul A. Porter, Price Administrator,* No. 279 in that Court, which said judgment was entered

on July 31, 1946, and became final on September 4th, 1946 upon denial by said court of petitioner's Petition For Rehearing or Modification of Judgment therein.

Petitioner files herewith a duly certified transcript of the record of said cause as the same appears of record in said court.[1]

Petitioner also files herewith for the convenience of the Court and as supplementary hereto, his *Exhibit To Petition* (For Writ of Certiorari), to which references will hereinafter be made.[2]

In support hereof your petitioner respectfully represents as follows:

OPINION AND PROCEEDINGS BELOW

The opinion of the Emergency Court is set forth in the certified transcript at pages 462 to 468 inclusive, and the Judgment of the Court dismissing the complaint is set forth on page 469 of said certified transcript. Subsequently to such opinion and judgment a Petition For Rehearing or Modification of Judgment was entertained and denied by said court (Tr. 473).

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(1) The record as transmitted herewith and as certified by the clerk of the United States Emergency Court of Appeals does not include approximately 1600 pages of evidence and exhibits which were filed by petitioner and accepted by Respondent as evidence in the proceedings before the administrator. (See letter from clerk of the Emergency Court which letter is set forth in the appendix hereto (pg 1). The omitted evidence is designated in the "NOTE" on the first page inside cover of the Transcript of Proceedings Before The Price Administrator, which constitutes the first volume of the record herein. See also Tr. 421-429.

(2) The "Exhibit" comprises the Brief For Complainant in the lower court together with appendix.

SUMMARY AND STATEMENT OF THE MATTER INVOLVED

Summary.

This petition seeks review of the judgment of the Emergency Court which denied relief to complainant in the matter of his complaint which said complaint is set forth in full in the certified transcript pages 361 to 412 inclusive.[3]

Brought into issue by said complaint is the validity of the Rent Regulation For Housing heretofore issued by the Administrator of the Office of Price Administration, respondent herein. It is the contention of your petitioner that such Regulation was (and is) invalid *as it was applied* to petitioner in civil and criminal judgments against petitioner, which said judgments and proceedings thereon were made a part of the record in the Emergency Court and in the Proceedings Before The Price Administrator precedent thereto (See Note (1) above).

Also brought into issue by said complaint is the question of the validity of the Emergency Price Control Act of 1942 *as it was applied and exercised against your petitioner* in the civil and criminal cases above referred to.

Your petitioner further respectfully urges and states that the Emergency Court has erred in its statement of vital facts (Tr. 471); that by denial of relief and by the refusal of the Court to answer fully and properly the questions presented, petitioner has been denied due process by said court; that by sustaining the Administrator in his refusal to grant your petitioner (1) a hearing, (2) compulsory process, or (3) any reasonable opportunity to offer direct evidence of other persons either in relation to facts

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(3) A summary of the complaint is set forth in the Preliminary Statement in "Exhibit to Petition" p. 1-3.

alleged and attested to by your petitioner or in rebuttal of evidence offered by respondent, the court has further denied due process to petitioner; that by refusing to compel the respondent to file a full and proper record in said court the court further denied due process to petitioner (Tr. 421-429, see Note 1).

Statement of the Case.

Protest MR 28-31-P was filed by your petitioner in the Office of Price Administration on August 1, 1944, (Tr. 1-105). Said protest stated that it involved a criminal judgment as well as civil judgments (Tr. 2-5, 40-51, 59-60, 80-82). Petitioner specifically requested a hearing and compulsory process in the original protest (Tr. 57 (c), 102, 109) and requested such hearing in subsequent proceedings (Tr. 123) but such request was denied by respondent on November 18, 1944 (Tr. 132-135 at 135) and no hearing or compulsory process was granted by respondent (Tr. 1-360).

The said protest was dismissed and denied by respondent on November 2, 1945 (Tr. 335-366).

Pursuant to the denial of said protest, petitioner filed his complaint in the Emergency Court of Appeals wherein it was designated as *Taylor v. Bowles,* No. 279 (Tr. 361-412). On December 26, 1945, the Emergency Court, over the objections of petitioner, granted respondent permission to file less than the required number of copies of various exhibits (Tr. 421-429 at 429). The case was heard at San Francisco on April 20, 1946 (Tr. 461) and the decision and judgment was filed July 31, 1946 (Tr. 462-469 at 469). Petition for Rehearing or Modification of Judgment

was entertained and denied by the court on September 4th, 1946 (Tr. 470-473 at 473).

The basic facts underlying the Protest are set forth in the "Statement of the Case," pages 5 to 29 inclusive of petitioner's Exhibit To Petition filed herewith. Petitioner respectfully requests this Honorable Court to consider the facts there stated (with references to the transcript) as fully as though said facts were here set forth in full.

STATEMENT OF BASIS OF JURISDICTION

The jurisdiction of this cause is specifically vested in this Honorable Court by the provisions of the Emergency Price Control Act of 1942. (Public Law 421, 77th Congress; see also the Act as amended). Section 204(d) of said Act provides in part as follows:

> "Within thirty days after entry of a judgment or order, interlocutory or final, by the Emergency Court of Appeals, a petition for a writ of certiorari may be filed in the Supreme Court of the United States, • • • The Emergency Court of Appeals, and the Supreme Court upon review of judgments and orders of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any regulation or order issued under section 2, • • •" (of the Act).

(Section 2 of the Act referred to in the above quotation is the section authorizing rent and price control and covers the regulations and matters herein at issue.)

The petitioner has duly followed the procedure set forth in Sections 203 and 204 of the Act and the subject matter

of his protest and cause in the Emergency Court of Appeals is that specified in the appropriate provisions of the Act.

QUESTIONS PRESENTED

1. Whether the Rent Regulation for Housing is (or was) valid as it was applied to petitioner and petitioner's property in the civil and criminal judgments which are in large part the subject matter of the Protest and Complaint precedent hereto.

2. Whether the enforcement and procedural provisions of the Emergency Price Control Act of 1942 are (or were) valid in providing for the enforcement of the Regulation in question by civil and criminal penalties in Courts which were deprived of jurisdiction to consider the validity of such regulation in circumstances where the defendant in such proceedings had not forfeited his right to challenge the validity of such regulation, and where such defendant had had no opportunity to establish the invalidity of the Regulation prior to judgment.[4]

3. Whether petitioner was deprived of due process in that he was forced to trial and convicted of a violation of the Rent Regulation in a court which was deprived of jurisdiction to consider the validity of such regulation in circumstances where he, the petitioner, was at such time diligently seeking determination of the validity of the Regulation by resort to the statutory procedure taken prior to any charges or complaint against him.[4]

([4]) This question was reserved for later decision by this Honorable Court in the case of *Yakus v. United States*, 321 U. S. 414, 446, 447 (1944).

4. Whether petitioner was afforded due process and a constitutional trial in the criminal case, in view of the fact that for his defense based upon the invalidity of the regulation, he was denied a hearing at which he could present evidence, he was denied compulsory process, he was compelled to pay his fine and serve a six months sentence of imprisonment before adjudication of such defense.[5]

5. Whether petitioner was afforded due process in the litigation as a whole, in view of the fact that Respondent's influence upon the courts was so great as to cause such courts to adopt erroneous and improper and inconsistent constructions of the regulation and Act in question. Thus at the urging and insistence of respondent the Circuit Court of Appeals for the Ninth Circuit adopted a wholly erroneous construction of the regulation for the purpose of affirming the judgments against petitioner (Tr. 11-15 at 13-14, see also Tr. 26-27 in relation to Section 205(f)2 of the Act). It is to be noted that in defense of the validity of the regulation respondent adopts a correct construction of Section 5(d) of the regulation (Tr. 139 bottom—140).

6. Whether a criminal trial divided into two separate parts provides due process under the constitution where as

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(5) In the *Yakus* case (Note 4) this Honorable Court held that the procedure in question was valid on its face, but the Court was careful to qualify its approval and to preserve the right to be heard and to present evidence.

The Court there stated,

> "Such a procedure, so long as it affords to those affected a reasonable opportunity to be heard and present evidence, does not offend against due process." *Yakus v. United States*, 321 U. S. 414, Part III.

Again in Part IV of the same decision this Court restates the proposition with the same reservation as follows:

> "As we have pointed out such a requirement is objectionable only if by statutory command *or in operation* it will deny, to those charged with the violations, an adequate opportunity to be heard on the question of validity." (Our emphasis.)

in the present instance the Emergency Court has no authority over the District Court or the Circuit Court of Appeals, and may not either review judgments of such courts or set them aside upon a proper finding or decision as to the law.[6]

7. (a) Whether under the constitution of the United States a defendant in a criminal trial may be compelled to present any part of his defense in a court three thousand miles from the place where the crime was alleged to have been committed, and

(b) Whether in such criminal trial said defendant may be compelled to defend himself under a procedure so difficult, costly, and time consuming that it is only open to the comparatively well-to-do.

(c) Whether in relation to such defense the defendant may be constitutionally compelled to first present his charge of invalidity to the agency which issued the rule which he contends is invalid, and whether that agency (which issued the challenged rule) may constitutionally decide whether the defendant may have any hearing on such defense or not, and determine what evidence may be admitted, and whether or not defendant shall have compulsory process in his defense.[5]

(d) Whether such defendant and his property may constitutionally be held at the mercy and dictation of the accusing agency while said agency delays the determination of validity, denies a hearing and denies compulsory process.

([6]) The Emergency Court of Appeals in the instant case has confirmed the contention of petitioner that it does not have power to review or set aside judgments of the District Court or the Circuit Court (Tr. 468 bottom, see Tr. 41-42, 197-198 for contentions of petitioner in this regard.

8. Was (and is) Maximum Rent Regulation 28, now redesignated as Rent Regulation for Housing, generally fair and equitable?

9. Is said Regulation (in 8 above) according to law—valid in operation against landlords who are compelled to rent their premises at a loss thereunder?

10. Is the Regulation in question valid in view of the fact that it empowers the rent director and the administrator to compel the landlord to continue renting his property?

11. Does the installation of laundry equipment at a cost of $500.00 as done by petitioner comply reasonably with the requirements of the regulation as a "major capital improvement"?

12. Does such installation of laundry equipment comply reasonably with the definition of "a substantial change by a major capital improvement" which is contained in the Administrator's Interpretation on Major Capital Improvements? (See Exhibit to Petition, pp. 13-15 at 14, for the text of such definition; also see Appendix to the Exhibit for questions presented to the Administrator and the Emergency Court on this subject which each have failed and refused to answer notwithstanding that the validity of the criminal and civil judgments depend in large part upon the answers to such questions.)

13. Is it lawful in a criminal proceeding to reject the construction placed upon the regulation by the defendant when such construction is reasonably supported by the text of the regulation in question and by published interpretations thereof in circumstances where by rejecting such construction a criminal offense is created out of what

otherwise would be an innocent and lawful act? (See Exhibit to Petition, 33 to 39 at 36 and authority there cited.)

14. Was petitioner entitled to a warning notice by registered mail if "in the judgment of the administrator" he, the petitioner, had violated the rent regulation in question? (Tr. 26-34).

15. Was the refusal of the trial judge to instruct the jury as to the provisions of the Act and regulation as requested by your petitioner proper or was it reversible error? (Such refusal was sustained by the circuit court by placing an invalid and improper construction upon such provisions and in part by avoidance of a ruling (Tr. 27, 11-14, Exhibits J-J9; see Note inside cover Tr. Volume 1).

16. Are the criminal and civil judgments against petitioner valid in view of the undisputed evidence, the facts and the requirements of the constitution as to due process?

In addition to the foregoing there are numerous questions of fact and law which should be decided by this Honorable Court and which are a result of the complex relationship between the original criminal and civil procedures and the present procedure. These questions will become apparent upon examination of the instant case, and petitioner respectfully prays that he be not limited by the enumeration of the foregoing questions to a decision of those questions only. Petitioner rather prays that this Honorable Court take jurisdiction of the entire controversy and decide it as justice and the facts and constitutional law may dictate.

REASONS RELIED ON FOR GRANTING THE WRIT

1. Certiorari should be granted to correct the injustice and denial of due process which this petitioner has suffered at the hands of the Administrator and in the Emergency Court of Appeals.

In sustaining the procedure of the Act in the case of *Yakus v. United States,* 321 U. S. 414, (heretofore cited in footnotes 4 and 5) this Honorable Court pledged itself to correct the denial of due process by the Administrator or the Emergency Court in the following language,

> "* * *, it is irrelevant to suggest that the Administrator or the Court has in the past or may in the future deny due process. *Action taken by them is reviewable in this Court and if contrary to due process will be corrected here.*" (Our emphasis.)

The honor and integrity of this Court as well as the facts of the case and the important questions presented thereby should compel this Court to now keep its pledge above quoted.

To aid this Honorable Court in determining whether or not petitioner has been denied due process by the Administrator or by the Emergency Court, petitioner has filed herewith his Exhibit to Petition, which as hereinbefore stated is the Brief For Complainant which was filed in the lower court. In support of his charge of the denial of due process petitioner submits the entire record. Said Record discloses a shameless dishonesty and malfeasance of office on the part of the Administrator, and such record stands undisputed (see particularly Tr. 2-7, 28-34, 41, 44-48 at 47, 54-55, 68-87, 244-253, 254, 259, 265, 279-283, 286-294. See also Exhibit to Petition, 1-29, 61-68, 69-70, 71-72, 86-87, 92-99).

2. Certiorari should be granted to answer the questions which were reserved in the Yakus case heretofore cited (see notes (4)).

The questions referred to above are substantially set forth as questions No. 2 and 3, under "Questions Presented."

Petitioner does not agree with the Emergency Court in its contention that petitioner is not entitled to an answer to these questions (Tr. 464). Although petitioner has raised these questions in the past, they have never been answered one way or the other. The judgments against petitioner were entered under authority of the Act prior to the amendment of said Act by the addition of Section 204(e). Section 204(e) was not retroactive in relation to judgments which were entered more than a year prior to its enactment as were the judgments here under consideration[7] It is not true that petitioner could have raised all of the questions pertaining to the validity of the regulation which are here raised in his prior protest and appeal to the Emergency Court (Tr. 59-68, 442 bottom-444, 2-5, 10-15, 26-27, etc.). When, following the criminal trial, petitioner attempted to introduce evidence in the Emergency Court in *Taylor v. Brown No. 10* to show the invalidity of the regulation and Act as they were being applied in the criminal and civil prosecutions, the Emergency Court refused to admit the evidence. Again in *Taylor v. Bowles No. 81,* the Emergency Court refused to compel respondent to file records and evidence pertain-

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([7]) Following denial of certiorari in the criminal case, petitioner through his attorneys, applied to the Circuit Court of Appeals for a stay but such stay was denied and petitioner was compelled to serve his sentence and pay the fine assessed, prior to adjudication of the validity of the regulation as applied in said criminal case.

ing to these matters notwithstanding that such evidence had been stipulated to be a part of the record in the protest proceedings (Tr. 22-23, 49, 178-179, 205). Petitioner emphatically denies that the validity of the criminal judgment here involved is "of academic interest only." While it is true the Emergency Court has no authority over the District Court, that cannot be said as to this Honorable Court, and there can be no doubt that upon an appropriate ruling of this Court such judgment will be set aside.

3. Certiorari should be granted to determine the validity of the Act and of the protested procedure thereof in actual practice and application. These are questions of widespread interest and great importance.

It is to be noted that when this Honorable Court sustained the procedure in principle (or on its face) in the *Yakus* case, supra, the Court not only reserved several questions in relation thereto, but it also made clear that such procedure, to provide due process, must provide "an adequate opportunity to be heard" and to present evidence "*in operation*" (see note 5, p. 7). As shown hereinbefore and by references to the transcript your petitioner was denied a hearing and compulsory process by the Administrator in the protest proceedings; has been denied an adequate or stipulated record in the Emergency Court; has been denied an opportunity to introduce evidence in said court; and in the present case the court allowed respondent to so file the record that the clerk of said court upon application of petitioner for a certified copy thereof to file in this Honorable Court was compelled to inform petitioner that there was not a complete record in said

court (see letter from clerk of Emergency Court, Appendix p. 1). The undisputed evidence shows that this type of due process is common practice by the administrator and the Emergency Court (Tr. 178-180, 249-252).

There is a very grave and insistent demand upon this Honorable Court to decide this question, for some of the highest tribunals in our states have openly held the procedure to be invalid in operation and practice.

This Honorable Court is respectfully referred to the decision of the Supreme Court of the State of Washington in the case of *Walker v. Gilman, infra,* decided on August 8, 1946. It is to be noted that this high court also quotes in its opinion, the opinion of the highest court of the State of Massachusetts, which also condemned the procedure as a denial of due process. The Supreme Court of the State of Colorado in a unanimous decision in the case of *People v. Max,* 70 Colo. 100, 198 Pac. 150, discussed the effect of depriving a trial court of power to determine the validity of a challenged law or to decide a constitutional question (Exhibit to Petition, pp. 81-82). Under this decision the trial court would be deprived of jurisdiction if it were unable to determine the constitutional questions raised in the case before it.

The citation and relevant quotations from the *Walker v. Gilman* case follow:

> *Walker v. Gilman,* Washington Decisions Advance Sheets, Volume 125, No. 18, p. 520 (August 1946):
>
> "We deem it not improper to say that some of the judges who sign this opinion, including the author thereof, believe that the act is unconstitutional, at least

in so far as it arbitrarily restricts jurisdiction to question any administrative act done thereunder, or to review any order made pursuant thereto, to one single special court, to wit, the emergency court of appeals sitting in Washington, D. C. * * *'' (pp. 533-534).

Referring to the plight of the appellant, the court continued:

"The amount involved is not large, but may have meant a great deal to him. But even if he had been able to safely navigate the summary and devious course of procedure provided in the act and had, in consequence, won a complete victory in the emergency court of appeals, it would have cost him far more than it was worth. * * *

The vast majority of cases, such as this, involve amounts less than a thousand dollars. In any case arising in the State of Washington involving a lesser sum, or for that matter arising in any state west of the Mississippi, the purported and pretended remedy provided by the act is so clearly valueless that it is, in the 'logic of realities', no remedy at all. It seems to some of us, when the private property of a citizen is summarily taken by an administrative officer of the government, and all courts, both state and Federal and of every kind and character within some thousands of miles from his place of abode, are absolutely forbidden to inquire into the matter, that, except in those comparatively few cases where large sums are involved, that property has been taken without due process, or, in short, has literally been confiscated. In alluding to that feature of the act, the supreme judicial court of Massachusetts, in its opinion in the *Leimberg* case, supra, after characterizing that procedure as '. . . an unusual and ingenious legislative device . . . intended

to make difficult any effective attack upon the constitutional validity of any regulation made by the administrator under the authority of that act', went on to further say:

'The legislative plan plainly was intended to put in default the great mass of persons who might eventually come into conflict with any regulation made by the administrator, and to foreclose their right to object to it on constitutional grounds. That plan was highly successful. Only the most vigilant could preserve their right to be heard. Others had to obey, or pay the penalty, no matter how outrageously the regulation might violate their constitutional rights' ". (p. 535).

Three dissenting justices in the above case held the Act to be unconstitutional. The dissenting opinion states in part:

"The unconscionable acts of the OPA in this case are in keeping with other acts of that arbitrary, dictatorial, and un-American bureau, which, holding forth the bugaboo of inflation, has brought financial ruin to tens of thousands of Americans. As Senator Byrd has said, 'It is a new idea, strange to the American way of life and foreign to its origins.' Its rent controls have advanced to a point of confiscation and control of property without trial or due process of law. Under the OPA system, a business man in certain lines has three choices: (1) lose money; (2) violate orders; or (3) go out of business."

After disclosing the debacle in the steel and dairy industries, in which the opinion asserts that the OPA caused a loss of one billion dollars to the steel industry and the destruction of dairy herds by the thousands, the opinion

quotes from the report of a Congressional committee made in November, 1943, as follows:

> "Your committee has found, not only that the Office of Price Administration has developed an unauthorized and illegal judicial system but that through the mass of rules and regulations daily enacted has also developed such an intricate and involved administrative review machinery that litigants are completely bewildered . . . This situation must be changed, and changed immediately if our form of government is to endure. * * *"

The opinion continues:

> "It seems strange that OPA can survive. That it does live is due in a large part to its propaganda department manned by hundreds of skilled and well-paid servants who have overcome the spirit of liberty which actuated our forefathers in dumping British tea in Boston Harbor.
>
> OPA is an outlaw. It sears, burns, and destroys all it touches. It is a tyrant and knows no law save its own caprice. The problem confronting us is greater than the decision in this case—it involves the existence of a free country. Now America is traveling the road to serfdom, guided and commanded by thousands of boards, bureaus, offices, and commissions. In the forefront, carrying the flag of tyranny, marches the OPA." (pp. 557-559).

4. Certiorari should be granted because the Emergency Court has clearly erred in its statement of the facts and because there appears to be a conflict between it and the Circuit Court of Appeals for the Ninth Circuit.

In the first instance it is not true that the administrator has ever ruled upon what section of the regulation is ap-

plicable to the apartments in question as stated by the court in the third sentence of its opinion (Tr. 462). As a matter of fact and record the administrator has consistently and persistently refused to make any official ruling upon this point notwithstanding that your petitioner has diligently sought such a ruling (Tr. 132-144 at 139-141, 187, 188, 471).

It is not true as stated by the Emergency Court (Tr. 466, bottom 467) that Section 5(d) of the regulation "was available" to petitioner either "at the time of the installation of the laundry equipment" or "at the time the alleged change took place."

On the contrary the regulation was not issued until after both of these events (Tr. 231-233). Maximum Rent Regulation No. 28 was issued on June 30, 1942, to become effective on the next day, July 1, 1942, in the San Francisco Bay Defense-Rental Area (Tr. 2, Opinion footnote 1, Tr. 462, 7 F. R. 4913).

It would have been a practical impossibility for petitioner or any landlord to obtain a ruling under Section 5(d) of the regulation by which he could fix his rentals on July 1st, 1942, when the regulation became effective or within months thereafter (Tr. 54-55). Nor was there any reason why petitioner should seek a ruling under Section 5(d) within the thirty days which that section provided for the landlord to invoke its provisions. As the Emergency Court says (Tr. 466, bottom) so petitioner likewise found the phrase "major capital improvement as distinguished from ordinary repair, replacement and maintenance" susceptible of understanding and application (Tr. 231-234). Nor did petitioner receive any warning

from the administrator or from his fifty odd tenants that he, the petitioner, had erred in considering the laundry equipment a major capital improvement (Tr. 234-235). For a more complete showing on the laundry equipment as a "major capital improvement" under the regulation and Interpretations this Court is respectfully referred to *Exhibit to Petition,* pp. 8-9, 33-39, Appendix (to Exhibit), pp. 1-6.

There is plainly a conflict between the decisions of the Circuit Court and the present decision of the Emergency Court in relation to Section 5(d) of the regulation and in relation to the clarity of Section 4(d) (4) (Tr. 13-14; see also Exhibit to Petition, pp. 22, 38-39). It gives no relief to petitioner, however, that the Emergency Court has placed a correct construction upon these two sections, for unless an authoritative and precise ruling is made holding the Circuit Court (or the District Court) to be in error it is obvious that said courts will not vacate the judgments against petitioner.

5. Certiorari should be granted because petitioner has been penalized and deprived of due process by reason of the fact, that while obeying the regulation, he sought to preserve his rights thereunder by the procedure which this Court has held to be valid on its face, and because after conviction he pursued his statutory remedies.

The evidence shows conclusively that petitioner was not guilty of violation of the regulation as charged in the criminal case; that conviction was obtained and sustained by reason of improper constructions of the regulation urged upon the courts by respondent; that respondent and his subordinates were motivated by vindictiveness

again petitioner by reason of the fact that petitioner had sought to protect his rights by filing a protest and a complaint in the Emergency Court (Tr. 159-253, Ex. J-J9).

It is not necessary to point out that this Honorable Court is a court of last resort, and that this Court does not often, if at all, grant certiorari in cases where it is known that there still remains a remedy in inferior courts or where such remedy is still being pursued and may obviate the necessity or propriety of the granting of certiorari in the given case.

In the instant case petitioner has heretofore sought certiorari in relation to the criminal judgment as affirmed by the Circuit Court for the Ninth Circuit and in relation to the ruling of said circuit court that the contempt order in question (Tr. 4) was not an appealable order. In each of these previous petitions to this Honorable Court, or in the course of proceedings thereon, this Honorable Court was informed that petitioner was seeking adjudication of the constitutional questions involved by the statutory proceedings which now reach their culmination in the present case.

Thus in deciding on whether this Court should accept jurisdiction of the cases on these previous petitions for certiorari, the Court was faced with the possibility that if it did accept jurisdiction, being by the statute deprived of jurisdiction to consider the validity of the regulation unless the case came through the Emergency Court *Yakus v. United States, supra,* the Court might find it necessary to again grant certiorari when and if the case came up again through the Emergency Court. This Honorable Court might even find itself in the position of being over-

ruled by said Emergency Court by reason of the fact that the Emergency Court could consider validity. On the other hand there was the possibility that the case would eventually be settled by the Emergency Court and thus avoid the necessity of any decision by this Honorable Court.

It is very plain that these considerations might well have been the deciding factor in the determination of this Honorable Court to deny certiorari in the previous petitions filed by petitioner. Thus it may well be that by the very fact that petitioner did seek to preserve his rights by the statutory process, here invoked, he was deprived of that review on certiorari which this Court might otherwise and probably would have granted.

CONCLUSION

Justice, due process, and the pledge of this Honorable Court set forth under Reasons Relied On for Granting the Writ (1) dictate that the writ should be granted.

Dated, San Francisco, California, September 28, 1946.

Motion for appointment of counsel and other relief is filed concurrently herewith.

Respectfully submitted,

STANLEY W. TAYLOR,
1201 Fulton St.
San Francisco (17), Calif.
Petitioner in Propria Persona.

(APPENDIX FOLLOWS)

Appendix

UNITED STATES EMERGENCY COURT OF APPEALS
U. S. COURT OF APPEALS BUILDING
FIFTH AND E. STREETS NW
WASHINGTON 1, D.C.

HERMAN C. BEASLEY
Clerk

September 10, 1946

Via Air Mail

Mr. Stanley W. Taylor
1201 Fulton Street,
San Francisco 17, California.

In Re: Stanley W. Taylor

v.

Paul A. Porter, Price Administrator.

Dear Sir:

Receipt is acknowledged of your letter of September 9, 1946.

As I am able to prepare only one copy of the transcript in the above entitled case, due to pressure of other official business, * * *

I observe that certain exhibits were filed in the above entitled case on January 7, 1946, by the Price Administrator. Only two complete sets of the exhibits were filed, together with one incomplete set in which Exhibits I-2 and J-4 are missing. I have on hand only the incomplete set. If you wish these exhibits to be filed with the Supreme Court, I suggest that you use for that purpose the complete set which I served upon you. If necessary you may forward said exhibits to me and I will certify them for you and deliver them to the Clerk of the Supreme Court.

The air mail postage for the transmittal of this

* * * * * * *

Very truly yours,
HERMAN C. BEASLEY, Clerk.

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FILED
OCT 2 1946
CHARLES ELMORE CROPLEY
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1946

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Respondent.

On Petition for Writ of Certiorari to the United States Emergency Court of Appeals

EXHIBIT TO PETITION

STANLEY W. TAYLOR,
1201 Fulton St.
San Francisco (17), Calif.
Petitioner in Propria Persona.

PARKER PRINTING COMPANY, 545 SANSOME STREET, SAN FRANCISCO

Subject Index

	Page
Preliminary Statement	1
Statement of the Case	5
The Property Involved	5
Larkin Street Property	6
Major Capital Improvement Installed	8
Operation of Apartment House Put on Cooperative Basis	10
Operation Under Rent Control	10
Conduct of the Administrator	26
Regulation Not Generally Fair and Equitable	28
Complainant Compelled to Continue Renting Property	28
Complainant Compelled to Operate at Substantial Losses	29
Summary of Argument	30
Argument	33
I. Invalid application of Regulation made by District Court and Circuit Court in determination that laundry and plumbing was not major capital improvement	33
II. Circuit Court placed invalid construction on Section 1388:1805(d) of Regulation in order to affirm judgments against complainant	39
III. Section 1388:1804 of Regulation is invalid, particularly subsections (a), (d)(3), and (d)(4) thereof	40
(1) For vagueness and uncertainty	40
(2) (a) Being not generally fair and equitable	44
(b) Do not contain or provide for adjustments required by law	44
(c) Do not constitute just compensation for accommodations complainant is compelled to rent by order of the District Court	44

Page

IV. Section 1388:1805(d) of Regulation is unlawfully vague and uncertain 45

V. Section 1388:1806 of Regulation is contrary to law in that it compells complaniant to rent his property in violation of Section 4(d) of the Act, and without due process or just compensation 48

VI. Section 1388:1809 (Evasion) is unlawfully vague, and violative of the Constitution in its scope and extent 49

VII. Sections (2b), 2(c), 2(d), and 2(g) of the Emergency Price Control Act are invalid by reason of broad and unlawful powers conferred upon the Administrator thereby 51

VIII. Sections 203 and 204 (Procedure and Review provisions) of the Emergency Price Control Act of 1942 are invalid and particularly as applied to complainant in the cases under consideration 53

IX. Sections 205(a), 205(b) and 205(c) of the Act are invalid by reason of the unlawful powers granted the Administrator, and in application the above powers deprive complainant and the citizen of due process 57

X. Section 205(f)(2) of the Act is unlawfully vague and uncertain and thereby complainant has been denied due process under the Act 59

XI. Section 4(a) of the Act is violative of the Constitution for requiring compliance with invalid regulations 68

XII. Section 305 of the Act is invalid on its face in purporting to set aside all law, including the Constitution, which might be properly construed to authorize action inconsistent with the provisions and purposes of the Act 69

Pages

XIII. O.P.A. Interpretation 4(d)-I, entitled Procedure Where There Is Doubt as to Whether a Major Capital Improvement Has Occurred is erroneous, unlawfully vague and uncertain, ineffective and void of force and authority, and constitutes entrapment 69

XIV. O.P.A. Interpretation 5(a)(1)-I, entitled Elements of Major Capital Improvement, originally published on August 3, 1942, is unlawfully vague, is ineffective and constitutes entrapment under the Regulation and Act 71

XV. The Act and Regulation as a whole is invalid by reason of the cumulative effect of the denial of due process thereunder 73

XVI. Conclusion of Argument 98

Table of Authorities Cited

Page

CASES

Baltimore v. Radke, 49 Ind. 217 51
Berndt v. Shaw, O.P.A. Service 622:21 47
Bowles v. Taylor et al., No. 22364-G, U.S. Dist. Ct. 45, 49, 61
Bowles v. Willingham, 64 S.Ct. 641 at 657 51
Bowles v. Willingham, 321 U.S. 503 ..... 55, 91
Brown v. Taylor et al., No. 22364 W 61

Cline v. Frink Dairy Co., 274 U.S. 445 ..... 41, 46
Connally v. General Construction Co., 269 U.S. 385 ..... 40, 46

Duval v. Mitchell, O.P.A. Service 622:163 47

General Investment Co. v. N. Y. Central R.R. Co., 70 L.Ed. 920 78

Henderson v. Morgan, U.S. Dist. Ct. D. Utah 61

Lanzetta v. State of New Jersey, 306 U.S. 451 ..... 41, 46
Louisville & Nashville R. Co. v. Stockyards Co., 212 U.S. 132, 144 92

McArdle, Ex parte, 19 L.Ed. 264 ..... 59, 78, 80
McGowen v. Dummont, et al., 54 F. Supp. 749 36
McMurray, In re, 8 Fed. Supp. 449, 452 78
Morrow v. Corbin, 62 S.W.(2d) 641, 644 78

People v. Max, 70 Colo. 100, 198 Pac. 150 ..... 59, 81

Roller v. Holly, 176 U.S. 398, 409 92
Rottenberg v. U. S., 321 U.S. 414, 88 L.Ed. 653 ..... 54, 55

Siebold, Ex parte, 100 U.S. 371, 25 L.Ed. 717 77
Snowden v. Hughes, 321 U.S. ....., 64 S.Ct. 397 80

Pages

Taylor v. U. S., No. 10,346 C.C.A. 9 ..... 47, 55, 60
Tot v. U. S., 319 U.S. 463 59

United States v. Carolene Products Co., 304 U.S. 144, 152-154, 58 S.Ct. 778, 783, 784, 82 L.Ed. 1234 80
U. S. v. Taylor, No. 27815-S, So. Div. U.S. Dist. Ct., No. Dist. of Calif 56, 74

Whitney v. People of the State of California, 274 U.S. 357 ..... 40, 46
Williams v. Williams, 125 S.E. 482, 483 78

Yick Wo v. Hopkins, 68 Cal. Rep. 294-306, 118 U.S. 356, 30 L.Ed. 220 ..... 51, 80
Yakus v. U. S., 64 S.Ct. 660 ..... 54, 55, 74

STATUTES

Emergency Price Control Act of 1942:
Section 2 ..... 59, 60, 68, 84
Section 2(b), 2(c), 2(d), 2(g) 31, 44, 51
Section 2(h) 53
Section 4(a) 20, 31, 40, 68, 85
Section 4(d) 30, 49, 53, 58
Section 203 ..... 31, 52, 75, 89
Section 204 ..... 23, 31, 38, 52, 57, 75, 89, 92
Section 204(d) 38, 52, 56, 58, 75, 76, 79, 87
Section 205(a) 31, 57
Section 205(b) 31, 40, 57, 84
Section 205(c) 31, 57, 58
Section 205(d) 34, 53, 72, 82
Section 205(e) 84, 85
Section 205(f)(2) 31, 59, 60, 61, 62, 64, 68
Section 305 ..... 32, 69

Maximum Rent Regulation 28 ..... 10, 59, 94
Section 1388:1804(a) 11, 20, 30, 40, 41, 44, 48
Section 1388:1804(d)(3) 11, 30, 40, 41, 42, 48, 66
Section 1388:1804(d)(4) 11, 18, 20, 30, 34, 40, 41, 44, 46, 48, 65, 72, 87
Section 1388:1805(d) 22, 30, 39, 45, 48, 61, 70
Section 1388:1806 ..... 30, 45, 48
Section 1388:1809 ..... 31, 49

Pages

MISCELLANEOUS

O.P.A. Interpretations and Regulations:
Interpretation 4(d)-I 32, 47, 69, 70
Interpretation 5(a)(1)-I 13, 15, 22, 32, 33, 71
Interpretation No. 9 47
Interpretation 77 ..... 66, 86
Procedural Regulation No. 3 94
Procedural Regulation No. 3, Section 1300:241 ..... 33, 34, 35, 73, 82
Procedural Regulation No. 3, Section 1300:243 82
Regional Rent Memorandum No. 19 ..... 13-15, 33

OTHER REFERENCES AND SOURCES

11 Am. Jur. 831 77
50 Am. Jur. 433, Section 409 36

Bailey on Jurisdiction, p. 11 ..... 59, 79
Bailey on Jurisdiction, p. 12 77

22 C.J.S. 203 80
35 C.J.S. 777, 787 79
Constitution, Fifth Amendment 40, 43, 44, 49, 50, 72, 74, 80, 88, 94
Constitution, Sixth Amendment 74, 80, 88

Hearings pursuant to House Resolution 102, Part 1 ..... 95, 96

Protest 15, Region VIII 64
Protest MR28-19-P 17, 22

U. S. Dept. of Labor, Bureau of Labor Statistics 28

No. 279

In the

United States Emergency Court of Appeals

STANLEY W. TAYLOR, *Complainant,*

v.

PAUL A. PORTER, Price Administrator, *Respondent.*

BRIEF FOR COMPLAINANT

PRELIMINARY STATEMENT

The complaint in the above entitled case brings into issue numerous questions of both fact and law, including questions of law heretofore specifically reserved for future decision by the Supreme Court of the United States. These reserved questions bear upon the adequacy of the procedure provided for by the Emergency Price Control

Act of 1942, whereby this Honorable Court is given exclusive jurisdiction of matters involving the legality of regulations and orders issued by the Administrator, respondent herein (complaint pp. 22-24 at 23, 36-50). The complaint charges that under the cited procedure, complainant was deprived of due process in specified cases both civil and criminal, and that he was deprived of his liberty and property by unconstitutional trials and judgments by reason of the provisions of the Act complained of and also by reason of the uncertainty, vagueness and ambiguity of specified sections or provisions of the Act, and of the regulations and interpretations issued pursuant thereto (complaint pp. 3-49).

The complaint charges that the provisions of the Regulation and Act complained of were applied to complainant in an invalid manner in the judgments in the cases designated in Part A(a)(5)(p. 2) of said complaint; that as so applied the Regulation and Act is invalid (complaint pp. 10-50); that respondent exerted his influence upon the courts and urged an erroneous construction of the Regulation and Act in such courts for the purpose of obtaining improper and unlawful convictions and judgments against complainant (complaint pp. 7, 21, 33, 36, 43-44); that in his disposition of the protest precedent hereto, the respondent has delayed and obstructed a proper adjudication of constitutional issues presented thereby and has knowingly caused the unlawful imprisonment of complainant and has knowingly held complainant under unlawful restraint and appropriated his property pursuant to unlawful judgments which should properly have been set aside upon an honest disposition of

such protest or a full and honest answering of the questions presented thereby (complaint pp. 3-10); that it is the policy and practice of respondent to make the procedure complained of difficult and formidable and by reason thereof complainant has been deprived of his property without due process (complaint p. 50).

As to all the above issues, the respondent has introduced no evidence, either in the protest proceedings or in this Honorable Court in opposition to the voluminous and extensive evidence introduced by complainant and contained in the Transcript and numerous Exhibits filed therewith.

The complaint also charges that the Regulation in question is not generally fair and equitable (complaint p. 15). In opposition to this issue raised in the Protest, the respondent introduced four exhibits which are contained on pages 111 to 120 of the Transcript. Of these exhibits the first two were objected to by complainant on the grounds of admissibility and relevancy, and the further ground that complainant was given no opportunity to rebut same or check the accuracy or relevancy thereof (Tr. 124-125). As to the Exhibits 3 and 4 submitted by Respondent, the same are identical with Exhibits filed by complainant in support of his cause except that respondent has altered his Exhibits by striking therefrom essential data which is relied upon by complainant. Complainant objected to such alteration of this data (Tr. 126-127). See Tr. pp. 275-278 and Exhibits B-7 and B-8 for the sources from which respondent's data was taken.

It is to be noted that in his Answer, respondent admits the basic facts alleged in paragraphs A and B of the

complaint (which are in the nature of a statement of basis of jurisdiction of the court over the case). Beyond this, respondent admits nothing except that the Regulation contains the provisions specified by complainant and that the housing accommodations in question were rented on March 1, 1942. Respondent's "Answer" is not an Answer on the merits but is a general denial of the complaint. Complainant does not believe that this is the type of Answer contemplated by the Rules of the Court (Rule 16(a)), and in view of the fact that this procedure and complaint is the only method of defense now open to complainant in his criminal case (*U. S. v. Stanley Taylor,* cited Tr. 2), it is pertinent to the question of due process under the constitution that before obtaining any consideration on the merits of his defense here raised, he has been compelled over a course of two years to set these facts or contentions forth in detail, first in protest form (Tr. 1-105), then in affidavit form (Tr. 159-294), thirdly, by formal complaint in this Honorable Court and fourthly, by brief herein, and that while these time-consuming and costly procedures were being carried on, he, the complainant, was compelled to pay the fine assessed and serve his sentence of six months imprisonment in full, without and prior to adjudication of questions of law upon which the validity of the judgment against him depended. It is also pertinent to due process under the Act that complainant and Evelyn Flynn were denied adjudication of these questions under purported authority of such Act in the Circuit Court of Appeals for the Ninth Circuit and in no less than three previous cases before this Honorable Court and in other proceedings before the respondent (Tr. 2, 160, 177-180).

In view of the numerous points to be covered in the brief, complainant will be compelled to limit the detail in the Statement of the Case as much as possible and will thereafter present certain facts pertinent to each point of the argument in the section of the brief devoted to Argument. Reference to the Transcript will be given in the Argument as to any facts there stated which have not been included in the Statement of the Case.

STATEMENT OF THE CASE

THE PROPERTY INVOLVED

The property involved is located at 530 Larkin Street and at 1225, 1227 and 1229 Fulton Street, all in San Francisco, California, the said property being owned by complainant (Tr. 226, 162-164). All the court litigation referred to in the protest is concerned with the property at 530 Larkin Street (Tr. 226). A full description of the Fulton Street property and the manner in which it is involved herein is set forth in Affidavit No. 2 of complaint (Tr. 226-228). Complainant was subjected to an arbitrary reduction of rentals in the Fulton Street property and was deprived by the Act and Regulations of any reasonable opportunity or procedure by which he could obtain judicial review of such reduction. Complainant was denied any hearing in relation to said reductions, and by reason of the fact that the cost and effort required to obtain judicial review would have been altogether out of proportion to the relief which could be obtained therefrom, complainant was obliged to submit to such arbitrary order and rely on previous protests

and complaint to this Court (Tr. 227). Complainant believed that the arbitrary reductions referred to above were made in retaliation against him because of his action in filing a previous protest and by reason of the fact that he was defending himself in litigation instituted by respondent concerning 530 Larkin Street. Complainant's belief that the rents in question were improperly and arbitrarily reduced was amply supported by official O.P.A. records (Tr. 226).

LARKIN STREET PROPERTY

The real property at 530 Larkin Street is a modern six-story steel frame and concrete building constructed in 1928-1929, at a total cost, including land, of approximately $175,000.00. It is located in the heart of San Francisco, two blocks north of the Civic Center and contains fifty apartments, all with outside exposure and having every convenience of a modern up-to-date apartment. The rooms are larger by 25% than rooms in similar apartments in the same neighborhood, which rent for comparable or higher rents (Tr. 228-229).

Rental data of the individual apartments in the building, comparable rents and just rents for the premises are attested to in Exhibit D (Tr. 284-285, attested to Tr. 225, 101, explained Tr. 83-84, attested 240-241).

Complainant acquired the property above described on August 16, 1941 (Tr. 230), at which time it had been in the hands of a trustee in bankruptcy for a considerable time (Tr. 229). During the period of bankruptcy, San Francisco rents in general were very low and economically unsound, having been depressed about 40% from the

levels prevailing from 1923-1929, within which period the building was constructed (Tr. 229). Such rents had been depressed and kept at almost depression levels by policies and activities of the Federal Government (Tr. 229-230). While in the hands of the Trustee in Bankruptcy the Larkin Street property was not operated on a sound basis. At the time complainant made his offer which resulted in the transfer of the property on August 16, 1941, only thirty-one of the apartments were rented. Two were utilized by the manager and seventeen were vacant. Fully furnished apartments were rented for as much as five dollars per month *less* than identical apartments in the same building which were unfurnished. All the rents were abnormally low and economically unsound (Tr. 230). Complainant realized that the property was not a paying business as it was being operated at the time he purchased it, but believed that sound management and operation would make the property profitable (Tr. 230).

Promptly after taking possession of the property complainant installed new management and shortly thereafter borrowed $5000.00 to facilitate the general rehabilitation of the property, which work was carried on in the spring and early summer of 1942 (Tr. 230-231). On March 1, 1942, such work was barely begun; the rents in the property were approximately 25% below the rents of comparable housing accommodations in the district. The comparable rents themselves in San Francisco were still economically unsound and low on March 1, 1942 (Tr. 231, 92, 93). Twelve apartments were completely rehabilitated between March 1, 1942 and July 1, 1942. Work on other apartments was commenced prior to March 1, 1942,

but finished between March 1, 1942 and July 1, 1942. A few were finished or rehabilitated after July 1, 1942. The rehabilitation was of a comprehensive nature so that the character of the housing accommodations was substantially changed and was of such an extent that it could be expected to result in a comparatively high percentage adjustment in rental. After rehabilitation these apartments were rented to new tenants at higher rentals or at increases in total costs to the tenants amounting to $10.00 to $20.00 per month (Tr. 231). This increase in rentals or total charges brought the respective rentals approximately to the rentals designated as "Fair Rent established by Tenants Survey May & June 1942" in Exhibit D. None of the rentals in question were as high as the "Comparable Rents" in column 7 of Exhibit D (Tr. 284-285; 233; Ex. J, p. 46; Ex. K, p. 63; Ex. J-7, p. 5, attested to Tr. 225).

On June 6, 1942, complainant and his wife sold the furnishings in the building to Evelyn Flynn for a consideration of $15,000.00 and entered into new rental arrangements with the tenants. The tenants who had previously rented the apartments as furnished apartments took cognizance of the change in ownership of the furniture and rented the apartments from complainant as unfurnished apartments (Tr. 232-233).

MAJOR CAPITAL IMPROVEMENT INSTALLED

On June 27, 1942, complainant completed the installation of laundry equipment in the apartment house for the use of all the tenants and on that date made the same available to such tenants. There had been no

laundry equipment available in the building previous to that time. The installation involved structural changes in the building and the installation of sewer, hot and cold water lines and electric lines. A new area was provided for the machine and for the use of the tenants, newly provided with plumbing not previously existing there. The total cost of the improvement was in excess of $500.00. The laundry equipment constituted an added feature available to each of the tenants and under normal circumstances would have resulted in a very substantial increase in the rental value. At the time of its installation it was of even greater value to the tenants than it would have been normally, because of the difficult laundry situation in San Francisco. At least one large laundry had been taken over by the Government and other laundries were refusing to take new customers. Deliveries of laundry were restricted and it was customarily impossible to get laundry done in less than a week. One tenant who used the laundry equipment only once a week testified under oath that it saved her $4.00 to $8.00 a month and that it was a great convenience to her as well. Other tenants, some of whom had infants, used the machine daily. Periods of use were assigned to the tenants and other periods in each day were held open for emergency or for those tenants who had special need. In addition to the initial installation of this equipment which cost in excess of $500.00, the upkeep and furnishing of hot and cold water, power, etc., connected therewith cost an additional $40.00 per month (Tr. 231-232; Ex. J, p. 94, 151, 177-178; Ex. J-10, Tr. 301-302 (see bottom of p. 302); Ex. K, pp. 58-62 at p. 62; Ex. K, p. 171,

210, 211, 212, 213, (see p. 209); Ex. J-3, pp. 3-4, attested to Tr. 225; Ex. J-6, p. ix in the Appendix, pp. 7-8, attested to Tr. 225).

OPERATION OF APARTMENT HOUSE PUT ON COOPERATIVE BASIS

Following the sale of furniture and the installation of the laundry equipment, but before July 1, 1942, the operation of the apartment house was put on a cooperative basis. The tenants paid complainant a basic rent for the apartment unfurnished, which was in every instance lower than the March 1, 1942, rent, and they paid Evelyn Flynn for the use of the furniture (which she owned and controlled), as a separate charge, distinct from the rent of the apartment. All other costs, cleaning, administration, and maintenance were on the basis of cost. The total of all charges or costs to tenants in no instance exceeded what would ordinarily be a fair rent for such apartment with the facilities and services provided therewith (Tr. 233). In addition to the improvements heretofore described complainant, as a part of a long-range plan of creating a harmonious, cooperative spirit in the property, had previously provided a sewing machine for the use of the tenants and about this time inaugurated a monthly drawing by which a U. S. Defense Bond and cash and other prizes were given the tenants without cost to them to a total of about $27.00 per month (Ex. J, p. 151, attested to Tr. 225).

OPERATION UNDER RENT CONTROL

On June 30, 1942, Maximum Rent Regulation No. 28 was issued, to be effective in San Francisco on July 1, 1942 (Tr. 233).

It is admitted by respondent in his Answer filed herein that Section 4(a) of the Regulation provided that the maximum rent for housing accommodations rented on March 1, 1942, should be the rent of such accommodations "on that date." It is further admitted by respondent that Sections 4(d)(3) and 4(d)(4) of the Regulation provided that the maximum rent for housing accommodations changed between the maximum rent date and the effective date of the Regulation (between March 1, 1942 and July 1, 1942) from fully furnished to unfurnished *or substantially changed between those dates by a major capital improvement, as distinguished from ordinary repair, replacement and maintenance, shall be, "the first rent for such accommodations after such . . . change".* (See also Tr. 233-244, 165-166; Ex. O, p. 2.)

In the circumstances of such change or improvement the maximum rent was automatically established by the Regulation as the first rent after such change or improvement without petition of the landlord, but the Administrator reserved the right to reduce such rent if it were higher than the rents generally prevailing in the Defense-Rental Area for comparable housing accommodations on March 1, 1942. The Administrator could reduce such rent either on his own initiative or on petition of a tenant under the circumstances set forth just preceding (Tr. 234; Ex. O, pp. 4, 5).

After the Regulation was issued, complainant took cognizance that many of his apartments had been changed from furnished to unfurnished, that many had been completely rehabilitated *and that all had been substantially changed by the installation and availability of the laundry*

equipment. Complainant believed that the maximum legal rents established by the Regulation for the Larkin Street property were the first rents after the installation of the laundry equipment on June 27, 1942 (Tr. 234, 300; Ex. J, pp. 156-158 at top 158; Ex. J-6, p. 13, part 3(a), attested to Tr. 225; Ex. K-1, pp. 6-7, attested to Tr. 225; Tr. 163, part (7), 184, 77, 36-38 at 38; Ex. K, pp. 199-200, attested to Tr. 225).

On and after July 1, 1942, every tenant in the premises at 530 Larkin Street had the right to file a petition for decrease in rent if the rent so fixed as the "first rent" after the installation of the laundry equipment had been set too high by complainant. The administrator also had the right to act on his own initiative. Further, if complainant collected any rents in excess of those provided by the Regulation, the tenants had the right to sue for treble damages or for $50.00, (whichever was higher) plus attorneys' fees. In the first five months after rent control was established no tenant made any formal complaint against complainant; no tenant filed any petition for reduction in rent; every tenant paid the rent charged without objection or protest except one, and that tenant did eventually pay; the Administrator issued no orders reducing the rents; the Administrator sent complainant no registered letter of warning informing him that in the judgment of the Administrator complainant was violating the Regulation; the Administrator was fully advised of the manner in which the apartment house was being operated (Tr. 234-235, 182-190 at 184-185; Ex. J-1, p. 5, bottom 6, attested to Tr. 225; Ex. J-6, p. 9, attested to Tr. 225; Ex. O).

On August 3, 1942, there was issued by respondent "Regional Rent Memorandum No. 19, Major Capital Improvement." The text of said Memorandum is set forth in full as "Defendant's Exhibit K", pp. 229-232 in Exhibit K filed herein. Said text is as follows:

("Defendant's Exhibit K")

"August 3, 1942

TO: All Regional and Area Rent Attorneys
FROM: Robert W. Wales, Assistant General Counsel
SUBJECT: Regional Rent Memorandum No. 19

Major Capital Improvement

The purpose of this memorandum is to provide more definite standards for the determination of what constitutes "a substantial change by a major capital improvement." Included is the substance of Policy Memorandum No. 1, which is being issued concurrently to the administrative heads of the Regional and Area Offices.

The general standard is that the major capital improvement has resulted in a substantial change in the housing accommodations such as would materially increase the rental value in a normal market where free bargaining prevailed unaffected by a shortage in housing accommodations. It must be different from ordinary repair, replacement and maintenance.

A major capital improvement falls into one of three categories:

(1) A structural addition.
(2) A structural betterment.
(3) A complete rehabilitation.

(1) Structural Addition:

A structural addition is a clear addition to the housing accommodations, such as the construction of an additional room or a new porch *or the installation of plumbing, heating or electricty* where such facilities did not previously exist. *The addition need not necessarily be a part of the structure,* but might also include a new garage or the installation of sidewalks:

If the improvement has resulted in some added feature which did not exist prior to the change of a kind which would normally result in an increase in the rental value, then it would be a substantial change by a major capital improvement.

(2) Structural Betterment:

A structural betterment is a qualitative improvement, even though such an improvement is in part a replacement. Within this group would be the modernization of an existing bathroom, the installation of a modern heating plant replacing an antiquated system, a change in the interior partitions such as would improve the layout, *and all changes of similar character.*

(3) Complete Rehabilitation:

A complete rehabilitation is a general modernization and reconstruction such as would make the property attractive in a different rental range. *Even though the individual items involved would, if considered separately, be normal repair, replacement and maintenance, if, in the aggregate, there is a substantial change in the character of the housing accommodations, there would be grounds for adjustment.*

The difference between a rehabilitation which is a major capital improvement and ordinary repairs is primarily a question of degree and extent. Only where the rehabilitation is so comprehensive that it could be expected to result in a comparatively high percentage adjustment in rental would it constitute a major capital improvement.

Even though a major capital improvement is made, it does not necessarily follow that an adjustment in the maximum rent is justified. Unless the improvement has resulted in an increase in the rental values of the housing accommodations, no adjustment should be granted. An example would be the installation of an automatic stoker in an apartment building where the landlord is obligated to furnish heat and hot water. *Such an improvement does not give the tenants anything they did not previously receive and is made by the landlord solely for his own benefit.* No increase in rental value would result, and no adjustment would be warranted.

It is important to note that where the landlord is now obligated to make and is making normal repairs, replacement and maintenance which the tenant was making on the date determining the maximum rent this is not a major capital improvement but gives grounds for an adjustment based on an increase in services. Likewise, if a new stove or refrigerator not previously provided is now furnished by the landlord, there would be an adjustment based on Section 5(a)(3)." (Exhibit K, pp. 229-232)

The foregoing "Rent Memorandum" was subsequently issued in the Official Interpretations of respondent under the designation of "Interpretation 5(a)(1)-I, Elements of Major Capital Improvement."

In such "Official Interpretation" which was issued on May 15, 1943, a final paragraph was added but the same is not applicable to the instant case. Applicable portions of the Interpretation are found in the Transcript and Exhibits herein at Tr. 65; Ex. J-1, pp. 29-30; Ex. J-2, pp. 33-34; Ex. J-3, p. 27; Ex. J-6, p. 16 note, appendix pp. iv-v; Ex. J-7, p. 9, note; Ex. K-3, p. 9-10; Ex. J, pp. 237, note 10; references are made to the interpretation at Tr. 36, 193; Ex. J, p. 237; Ex. J-3, p. 7; Ex. J-4, p. 28; Ex. J-6, pp. 11, 13, 16; Ex. J-7, pp. 2-3; Ex. K-1, pp. 8, 11, 12, 13, 24; Ex. K-3, pp. 4, 8, 9-10; etc., etc.

From August 8, 1942, to August 14, 1942, there was an interchange of letters between complainant and local attorneys for respondent relative to registration of the property in question and relative to the effect of the sale of furniture in the apartment house to Mrs. Flynn (Ex. J, pp. 103-115; Ex. K, pp. 186-191, 203-205). Complainant explained in his letter of August 14, 1942, that the change in manner of renting the apartments was made in June, 1942, and was evidenced by over fifty signed agreements. Complainant also stated his reliance on Maximum Rent Regulation 28 in support of his position, and stated that he was "voluntarily" complying with the law "in spite of my unaltered belief in its unconstitutionality." Complainant stated his intention of filing a formal protest against the law and Regulation within the month as provided by law (Ex. J, pp. 112-115).

Following this letter of August 14, 1942, and until November 9, 1942, no further objections were raised by

respondent to the manner in which the apartment house was being operated. Notwithstanding that he, the Administrator, was fully informed, he permitted complainant to continue until November 9, 1942, in the belief that he was operating his property under rentals in conformity with the Regulation, without word or suggestion after the letter of August 14, 1942, or the stipulation of August 27, 1942, hereinafter described, that in the opinion of the Administrator the rents charged were improper or illegal (Tr. 184-185).

On August 27, 1942, complainant filed a protest against the Act and Regulation, which said protest was docketed by respondent as Protest MR28-19-P (Tr. 235).

On August 27, 1942, complainant voluntarily transported David C. Dunlap, counsel for respondent, to the apartment house, and to complainant's office at 1201 Fulton Street and at those places voluntarily showed him contracts and agreements, and explained in detail the operation of the apartment house, giving him samples of the uniform terms of tenancy, house rules, agreements with tenants, notices, etc. Complainant also gave the said David C. Dunlap, a written stipulation concerning typical apartments (Exhibit J, pp. 116-117, 153-154, Tr. 184). In this stipulation of August 27, 1942, complainant reported that he had installed a major capital improvement in the premises for the benefit of the apartments in question (Tr. 184; Ex. J, p. 117).

Regarding Protest MR28-19-P, supra, complainant requested a hearing and an opportunity to present evidence therein, which requests were not granted, and the

protest was summarily denied (Tr. 235; Ex. J, pp. 120-121; Exhibits J-1 and J-5 at pp. 35-36 in each). Pursuant to the denial of the Protest, supra, complainant as chairman of a committee of San Francisco property owners commenced the national circulation of a booklet entitled "The other side of the question of Federal Rent Control." The booklet set forth the text of the Protest, supra, and announced that it was to be appealed. As a result of this booklet, threats of litigation were made against complainant by counsel for respondent and a campaign of tenant incitation, unfavorable newspaper articles, etc., was instituted against complainant by respondent (Tr. 186, 236; Exhibit J, pp. 154-159, 161; Ex. J-2, pp. 10-12, attested to Tr. 225; Ex. K, pp. 154, 158-160, 164-166, 180-181).

On October 23, 1942, complainant filed his complaint in this Honorable Court pursuant to the denial of the protest, supra. The complaint was docketed as cause No. 10 in this Court where it was known as *Taylor v. Brown*. The complaint was eventually dismissed by this Court and certiorari denied by the Supreme Court (Tr. 235).

On November 9, 1942, and while *Taylor v. Brown*, supra, was pending, respondent instituted injunction proceedings against complainant in the Federal District Court seeking to restrain complainant and Evelyn Flynn from collecting the rents and other charges which were being collected pursuant to Section 1388:1804(d)(4) of the Regulation and also seeking to restrain them from evicting tenants (Tr. 235-236; Ex. K, pp. 2-11). Temporary Re-

straining order was granted and continued in force until January 25, 1943, at which time a Preliminary Injunction was issued (Ex. K, pp. 11-16, 21-29).

Complainant sought a hearing before the Rent Director or an interview with the Regional Rent Executive but these were denied. Under the terms of the Injunction or Restraining order complainant was unable to operate without substantial losses. By such order from the Court, complainant and Evelyn Flynn were deprived of any compensation for laundry equipment or for additional furniture or increased services which were supplied to the tenants but which had not been supplied on March 1, 1942 (Tr. 236; Ex. K, pp. 11-14 at 13, 58-62, at 62, 63, 228, 210-213; Ex. M, pp. 4-5; Ex. M-1, pp. 10-11, attested to Tr. 225; Ex. K-1, pp. 7-8; etc., etc.).

Faced with such losses, a campaign of tenant incitation, threats of continuous litigation and having had reports of the intention of attorneys for respondent to "get" complainant and put him in jail, and being told by one such attorney that it was a personal matter with them, complainant sought to withdraw the Larkin Street property from the rental market under authority of Section 4(d) of the Act. Notices were given to respondent and to the tenants on or about December 4, 1942. Complainant offered to find other housing accommodations for the tenants. On December 5, 1942, respondent filed a motion in the Federal District Court asking that complainant be fined $500.00 and confined in prison until he would withdraw the aforesaid notices. The $500.00 fine was assessed and later remitted. On December 11, 1942, seven days after the notices were given, respondent caused a criminal action to be

filed against this complainant in the Federal District Court, charging complainant with twenty-one violations of Section 4(a) of the Emergency Price Control Act, and carrying a possible penalty of $105,000.00 fine and 21 years in jail. The violations alleged were for an alleged violation of the eviction provisions of the Regulation and twenty alleged violations of said Regulation by charging rents in excess of those provided thereby. Complainant was acquitted on the eviction charge and convicted on sixteen counts by reason of the fact that he collected the rents established by Section 1388:1804(d)(4) of the Regulation instead of those fixed by Section 1388:1804(a) of said Regulation (Tr. 236-237; Exhibits J to J-10; Exhibit O).

By the time of the trial of the criminal case, complainant's funds had been exhausted by previous litigation with respondent, and because of the injunction obtained by respondent against complainant whereby complainant was barred from collecting the proper rents for the property in question. Complainant was compelled to borrow money for bail prior to the trial and because of such temporary financial embarrassment was not represented by counsel at the criminal trial (Tr. 237).

Because of the fact that this Honorable Court may not sit as a review court over the conduct of the trial court in the criminal case, but may only consider the questions delegated to it by the Act and at issue under the complaint herein, complainant will not here give many of the facts of the criminal trial which are, however, fully set forth in the record for review by the Supreme Court, should it eventuate that this case comes before that Honorable Court.

For the purposes hereof it is sufficient to disclose that complainant was not guilty as charged and that the conviction and affirmation thereof by the circuit court were contributed to by:

(1) The uncertainty and unlawful vagueness of the Regulation and the Act.

(2) The denial to complainant under the Act of the right to show that the Regulation was invalid on its face and as it was being applied.

(3) The unlawful and improper influence of respondent exerted upon the courts (Tr. 81, 101, 237-238, 140, 164-171; Exhibits J to J-10).

Facts appropriate for the consideration of the above by this Honorable Court, include:

(a) Complainant did not charge rents in excess of those provided by the Regulation in question; it was admitted by the Government that,—

> "The rents which were charged in the transactions alleged in the Information are not shown to have exceeded the first rents charged after the alleged changes had taken place" (Ex. J-7, p. 5, attested to Tr. 225).

The improvements and changes authorizing the "first rents" under the Regulation were admitted and stipulated to in both the criminal and civil cases (Exhibit J-10, Tr. 296-304 at 302 and 304; Exhibit K, pp. 58-77 at 61, 62, 63, 71; Ex. J, p. 46, referred to in Ex. J-10, Tr. 304).

The improvement made by complainant (and which made effective the "first rents" thereafter as the maximum legal rents under the Regulation) fitted with exacti-

tude every test of Official Interpretation 5(a)1-I promulgated by respondent for the determination of this question (Exhibit J-7, pp. 2-4, attested to Tr. 225; Tr. 231-232; see also facts hereinbefore stated and the references there given).

In affirming the conviction, the Circuit Court was obliged to depart from the standards set up in the Regulation and the Official Interpretations thereof and did so depart from the construction authorized by such Official Interpretations for the purpose of affirming the criminal conviction. This was done both in relation to the Major Capital Improvements and the ruling on the requested Instruction relating to Section 1388.1805(d) of the Regulation (Exhibit J, pp. 236-238, 247-239-240, 196-198; Ex. J-7, pp. 2-4; Tr. 168-171 at 170, 164-167, 35-36 at 36, affirmed 101, 219-220, 190-192; Exhibit J-1, pp. 27-32, attested to Tr. 225).

(b) Complainant was deprived by the Act of the right to establish in the criminal and civil trials or the appeals therefrom in the Circuit Court that the Regulation was invalid on its face and as it was being applied to complainant and complainant's property by the judgments in the criminal and civil cases (Tr. 19-20, affirmed 101; Ex. J, pp. 248, 115-116, 120-122, 123-147 at 134-137).

Complainant was forced to trial in the criminal case in question and convicted of violation of the Regulation while diligently seeking determination of its validity by the statutory procedure. Complainant had had no opportunity to establish the invalidity of the Regulation by resort to the statutory procedure, and was precluded at the criminal trial from showing the full facts relating to his efforts to establish such invalidity (Tr. 176-177, 19-20, affirmed 101; Ex. J, pp. 121-122, 123-147).

Complainant has been compelled to serve a term of imprisonment (serving out his sentence in full) and has been compelled to pay the fine assessed in the criminal case, and has been deprived of the use and control of his property herein involved since November 9, 1942, and has been compelled to forego the collection of agreed and contracted rents for the said property since that date by reason of the civil case, and during all the time that he has been subjected to the judgments, penalties, and deprivation of property and rentals above referred to, he has been diligently seeking adjudication of the validity of the Regulation and Act and seeking adjudication of constitutional questions upon which the validity of the judgments depend. Complainant has not forfeited his right to such adjudication "by failure to make timely assertion of the right before a tribunal having jurisdiction to determine it" (Tr. 19), but has been denied such adjudication. Constitutional questions and other issues of vital importance to complainant and pertaining to the above cases remain unsettled and undetermined (Tr. 159-162, 19-21, affirmed 101, 145-156, 1-359; Exhibits J to J-9, K to K3, and L-1, inclusive).

(c) Facts relating to the unlawful and improper influence of respondent upon the courts in question are:

(1) The courts are required to enforce orders and Regulations of respondent without regard to their validity; i.e., the court may not consider whether such order or Regulation is valid or not (Sec. 204 (50 U.S.C.A. 924) of the Emergency Price Control Act of 1942; Tr. 17-20, affirmed 101; Ex. J, pp. 134-137).

(2) Concerning the cases in question the following facts are relevant as evidence of undue influence: The trial

judge in the criminal case stated in open court that he knew no federal agency would bring a man into court unless it was justified (Tr. 52, affirmed 101, 208, 225); said judge admitted extensive evidence at the trial over the objection of complainant, which evidence showed that no improvements were made in the apartments at times wholly irrelevant and then stopped complainant from introducing evidence in his defense as to such improvements made between March 1, 1942, and July 1, 1942, on the grounds that it was "not disputed" that such improvements had been made (Tr. 237-238; Ex. J, pp. 56, 49, 55, 58, 61, 62, 63, 65, 67, 68, 75, 78, 79, 94; Ex. J-10, Tr. 304); said judge refused to permit complainant to discuss or argue the instructions to the jury, refused to permit complainant to submit instructions after he knew what the case amounted to or after the testimony was in, and refused to instruct said jury as to sections of the Act and Regulation as requested by complainant (Tr. 297-298, 238; Ex. J, pp. 195-198); said judge instructed the jury: "You are instructed that the law presumes that every person intends the natural and ordinary consequence of his act. *Wrongful acts, knowingly or intentionally committed, can not be justified on the ground of innocent intent*" (Ex. J, p. 188; Tr. 46, affirmed 101); said judge permitted a highly emotional appeal on the part of the prosecutor in his argument to the jury and permitted said prosecutor to inform said jury that complainant admitted he was guilty, which statement was not true (Tr. 238, 53, affirmed 101, 225; Ex. J-2, pp. 70-71, affirmed Tr. 225; Ex. J-3, p. 38, affirmed Tr. 225); said judge failed to have vital portions of the trial recorded to the prejudice of com-

plainant. Among such portions not recorded were exceptions taken by complainant to statements made by the court to the jury, orders made by the court to complainant to keep quiet under penalty of punishment and the argument of the case (Tr. 238, 296; Ex. J-2, p. 70, affirmed Tr. 225).

Space does not permit a complete showing on this point in this Brief. For facts bearing on the influence of respondent in the Circuit Court, this Court is respectfully referred to the fact that said Circuit Court affirmed the judgments of the District Courts in both the criminal and civil cases, which complainant deems to be conclusive evidence of undue influence (or of prejudice) in the light of the facts hereinbefore shown and the facts and evidence disclosed by the record herein. This Court is respectfully referred in particular to Exhibits J to J-10, inclusive, and Exhibits K to K-3, inclusive.

In Case No. 3, cited herein at Tr. 4 and 162, and the subject of Exhibit L-1, the District Court, at the insistence of respondent, "found" that payments made on account of the purchase of furniture "were in fact rent subject to said Rent Regulation for Housing" (Ex. L-1, pp. 18-19, part 5). The court fined complainant $500.00 and ordered a refund of sums in excess of that amount to tenants on the finding that such purchase payments were rent (Exhibit L-1, pp. 15-21). The evidence shows that on July 20, 1943, prior to all the transactions the subject of the contempt order, supra, the same court and judge specifically found in relation to an identical transaction that said transaction was *not* a violation of the injunction in ques-

tion (Ex. L-1, pp. 2-7, 121, 119, 112-113); both the court and counsel for respondent admitted that the contract of sale was legal and binding (Ex. L-1, pp. 51-52, 62-65), but nevertheless, counsel for respondent insisted that the payments on the purchase price were "just plain rent" (p. 62) and "so far as Mr. Taylor is concerned, he is receiving that as he would rent, and it won't make any difference" (p. 65). The court overruled counsel for respondent in his contention last above cited in the first instance, but fined complainant and held him in contempt of court at the insistence of respondent when he, the complainant, acted in reliance upon such ruling (Ex. L-1, pp. 2-21, 22-136).

CONDUCT OF THE ADMINISTRATOR

Throughout the entire controversy involving complainant and Evelyn Flynn, respondent has conducted the cases and procedures in a manner which indicates either gross incompetence and ignorance or a deliberate attempt to defraud complainant and deprive him of his liberty and property unlawfully (Tr. 242). Records have been misstated in briefs, the courts have been advised contrary to Official Interpretations, filing dates (date of acknowledgment of service) were deleted from copies of Evelyn Flynn's protest in order to deceive the court as to when it was filed and thus deprive her of a right of judicial review. The courts have been misinformed as to the regulations and facts; cases have been cited as applying to one circumstance and portions thereof cited in briefs when the sentences just preceding and just following the

portion of the opinion quoted show that the case does not sustain the position the Administrator is taking, but that it, in fact, sustains complainant (Tr. 242; Ex. M, pp. 21-22; Ex. M-1, pp. 1-18; Ex. M-2, pp. 4-5, Appendix, pp. i-v; Ex. J-8, pp. 8-9, 5; Ex. J-7, pp. 2-5 at 4, 9 notes, 10-11, 11 notes, 12-28; Ex. K, pp. 199, 172, 179, 178, 3-10, 89, 90, 92-93; Tr. 184-189, 244-253; Ex. J-3, pp. 26, 17-22).

While denying complainant and Evelyn Flynn any relief and while compelling them to operate under substantial losses, respondent's Acting Rent Director in the San Francisco Area Office was endeavoring to purchase the property involved at a fraction of what it was worth (Ex. M-2, Appendix, i to v, attested to Tr. 225).

The type of conduct hereinbefore complained of and evidenced by the entire case is not exceptional for respondent and is not confined to complainant's case. It is common practice for respondent to issue and maintain orders and regulations of questionable or known invalidity, and to use tactics of delay and obstruction to prevent a prompt or effective judicial review thereof. After judicial review or congressional directives have condemned certain promulgations or policies, the respondent has nevertheless proceeded to continue such policies by evasive methods or by the simple expedient of requiring each person to get his own adjudication on the same points which have been previously adjudicated against respondent. Complainant has been denied compulsory process herein and has been denied any hearing by respondent herein. It is common practice for respondent to make his pro-

cedures as difficult and formidable as possible (Tr. 250-253, 286-294, 85-91, 73, 46-47, 24, 130, 199-200, 205, 210-215 and references there given; Ex. M-2, Appendix, v to xii).

REGULATION NOT GENERALLY FAIR AND EQUITABLE

The record and exhibits show that respondent has frozen rents at their worst relative position since records have been kept by the U. S. Department of Labor, Bureau of Labor Statistics, a period of over thirty years; that while under control of respondent, the general cost of living and general prices have risen by substantial amounts and percentages, and wages of the average worker have also risen by substantial percentages, rents have been held almost rigidly. Complainant incorporates herein as fully as if the same had been set forth in detail, the data and text of the following Exhibits: Ex. B, Tr. 92; C, Tr. 93; B-1, Tr. 254-256; B-2, Tr. 257-259; B-3, 260-262; B-4, 263-265; B-5, 266-267; B-6, 268-273; C-1 to C-4, inclusive, Tr. 275-283. Reference is also made to Exhibits B-7 and B-8, filed separately as original sources, and the court is respectfully referred to the statements in Exhibits M-2, p. 5; I-2, pp. 4-14 and J-2, pp. 91-94.

COMPLAINANT COMPELLED TO CONTINUE RENTING PROPERTY

Complainant has been compelled by respondent to continue renting the property in question against the will and desire of complainant since December 15, 1942, and prior to

that was compelled to continue renting by the terms of the Regulation and by the terms of the Restraining Order obtained by respondent on November 9, 1942 (Tr. 172; Ex. J, pp. 156-174; Ex. K, pp. 2-29, 95-101; Tr. 244-246).

After this Honorable Court ruled on November 27, 1944, that

> "the Act does not compel him to continue renting the apartments at the existing level of maximum rents." (*Taylor v. Bowles,* No. 81)

and remanded the case to respondent for further proceedings in conformity with the opinion, respondent still compelled complainant to continue renting under the same restraint and at the same level of maximum rents (Tr. 244-246). On January 17, 1945, the Circuit Court of Appeals in the civil case upheld the original injunction and refused to relieve complainant of the obligation thereunder to continue renting. *Taylor et al. v. Bowles,* 147 F.2d 824.

COMPLAINANT COMPELLED TO OPERATE AT SUBSTANTIAL LOSSES

By reason of the restraints and injunction imposed upon complainant by respondent, complainant was compelled to operate the property in question at a loss of $80.22 in 1942, and a loss of $2037.06 in 1943, in addition to which complainant was (and is) compelled to provide his own services in the operation and administration thereof without compensation, and complainant's wife keeps the books and records without compensation (Tr. 239).

Expenditures and losses imposed upon complainant by respondent in connection with the litigation here involved exceeded $12,800.00 at the date of filing of the protest precedent hereto (August 1, 1944) (Tr. 200, 106).

SUMMARY OF THE ARGUMENT

I.

The District Court and Circuit Court made an invalid application of the Regulation in determining that the installation of laundry equipment, plumbing and attendant structural changes, was not a major capital improvement under the Regulation.

II.

The Circuit Court placed an invalid construction upon Section 1388:1805(d) of the Regulation in order to affirm the judgments in the cases in question.

III.

Section 1388:1804 of Regulation is invalid, particularly subsections (a), (d)(3), and (d)(4) thereof:

(1) For vagueness and uncertainty;

(2) (a) Being not generally fair and equitable;

(b) Do not contain or provide for adjustments required by law;

(c) Do not constitute just compensation for accommodations complainant is compelled to rent by order of the District Court.

IV.

Section 1388:1805(d) of Regulation is unlawfully vague and uncertain.

V.

Section 1388:1806 of Regulation is contrary to law in that it compels complainant to rent his property in violation of Section 4(d) of the Act, and without due process or just compensation.

VI.

Section 1388:1809 (Evasion) is unlawfully vague, and violative of the Constitution in its scope and extent.

VII.

Sections 2(b), 2(c), 2(d), and 2(g) of the Emergency Price Control Act are invalid by reason of the broad and unlawful powers conferred upon the Administrator thereby.

VIII.

Sections 203 and 204 (Procedure and Review provisions) of the Emergency Price Control Act of 1942, are invalid and particularly as applied to complainant in the cases under consideration.

IX.

Sections 205(a), 205(b) and 205(c) of the Act are invalid by reason of the unlawful powers granted the Administrator, and in application the above powers deprive complainant and the citizen of due process.

X.

Section 205(f)(2) of the Act is unlawfully vague and uncertain and thereby complainant has been denied due process under the Act.

XI.

Section 4(a) of the Act is violative of the Constitution for requiring compliance with invalid regulations.

XII.

Section 305 of the Act is invalid on its face in purporting to set aside all law, including the Constitution which might be properly construed to authorize action inconsistent with the provisions and purposes of the Act.

XIII.

O.P.A. Interpretation 4(d)-I, entitled *Procedure Where There Is Doubt as to Whether a Major Capital Improvement Has Occurred* is erroneous, unlawfully vague and uncertain, ineffective and void of force and authority, and constitutes entrapment.

XIV.

O.P.A. Interpretation 5(a)(1)-I, entitled *Elements of Major Capital Improvement,* originally published on August 3, 1942, is unlawfully vague, is ineffective and constitutes entrapment under the Regulation and Act.

XV.

Part XV of the Argument is devoted to a disclosure of the general effect of the Act and Regulations as a whole, and shows that in application to complainant and others the result thereof is a denial of due process so serious as to demonstrate the invalidity of the Act and Regulation and the specific provisions there referred to.

XVI.

Part XVI concludes the Argument. "The Court Review is a solemn farce."—quoting from Mr. Justice Roberts. Judgment should be entered in favor of complainant.

ARGUMENT

I.

The District Court and the Circuit Court made an invalid application of the Regulation in determining that the installation of laundry equipment, plumbing and attendant structural changes, was not a Major Capital Improvement under the Regulation.

As has been shown in the Statement of the Case, and by references to the Transcript and Exhibits,—

> "The improvement made fits with exactitude every test of Official Interpretation 5(a)1-I promulgated by the Office of Price Administration for the determination of this question" (Ex. J-7, p. 5).

Although these assertions have been made since November 9, 1942 (relating then to "Memorandum 19," by which name the Interpretation was then known) both the Government and respondent have refused to recognize the Interpretation (Ex. J-7, p. 4). By this it is not meant that they repudiate it, it is simply ignored!

This position is untenable in the instant case. In the "Opinion" of respondent (Tr. 344) he recognizes the need for clarification of the "meaning and application of the Regulation", and states that Interpretations are periodically issued for this purpose. He has gone further than this. He has placed those Interpretations on the same level in force and effect as a Regulation, by enacting Section 1300:241 of Procedural Regulation No. 3, which provides:

> "Action taken in reliance upon and in conformity with an official interpretation and prior to any revocation or modification thereof or to any superseding

> thereof by regulation, order or amendment, shall constitute action in good faith pursuant to the provision of the act, or of the regulation or order to which such official interpretation relates."

By this provision of the procedural regulation, supra, the Official Interpretations here under consideration have been given the force and effect of law in that by fixing his rents in accordance with Section 1388.1804(d)(4) of the Regulation as the first rent after the Major Capital Improvement *as defined by the Interpretation,* complainant falls within the protection of Section 205(d) of the Act, which provides:

> "(d) No person shall be held liable for damages or penalties in any Federal, State, or Territorial Court, on any grounds for or in respect of anything done or omitted to be done in good faith pursuant to any provision of this Act or any regulation, order, price schedule, requirement or agreement thereunder . . ."

The respondent has attempted to say, following Judge St. Sure in Habeas Corpus proceedings, that complainant is not entitled to the protection or immunity of Section 205(d) of the Act (Tr. 352). His reasoning does not appear to be consistent. Under Section 1300:241, supra, it is positively and clearly stated that action *in reliance upon* and *in conformity with*—the interpretation—

> **"shall constitute action in good faith pursuant to the . . . regulation."**

How, then, can he state

> "it is doubtful whether the protestant acted in good faith"?

He himself has taken care of the "good faith", by his enactment. All the citizen or complainant must do is act *in reliance upon* and *in conformity with* the Interpretation. Then we find respondent stating that even if complainant did act in good faith

> "he did not act pursuant to the Regulation but rather in violation of it."

Here again he ignores his own procedural regulation, for the regulation states to the contrary that action taken in reliance upon and in conformity with the Interpretation—

> "shall constitute action . . . pursuant to the regulation."

If he bases his contention that complainant acted "in violation of the regulation" upon the finding of the jury, he is again in error. The jury was not qualified to determine whether complainant had made a major capital improvement.

The improvement was admitted, and stipulated to. It was therefore a matter of law whether the improvement was a major capital improvement or not. The jury was not qualified to decide such a question. Nor were any standards given in the instructions by which they could determine it, unless it is considered that the words

> "as distinguished from ordinary repair, replacement and maintenance"

gleaned from the Regulation constitute sufficient standard.

But no matter what the jury found or what the District Court or the Circuit Court determined, the respondent, by his Regulation (1300:241, supra) has made the Interpretation the test and the law, for the evidence is

undisputed that complainant relied thereon and acted in conformity therewith.

Even without the Interpretation the improvements must be regarded as a major capital improvement in order to comply with established law.

The Emergency Price Control Act of 1942 is a penal statute. (*McGowen v. Dummont, et al.,* 54 F. Supp. 749.) In the interpretation of a penal statute, it should be given careful scrutiny and should be construed with such strictness as to safeguard the rights of a defendant. (*McGowen v. Dumont,* supra.)

> "If a statute admits of two reasonable and contradictory constructions, that which operates in favor of a party accused under its provisions shall be preferred and where there is any well founded doubt as to any act being a public offense it should not be declared such, but should rather be construed in favor of the liberty of the citizen."
>
> 50 *Am. Jur.* 433, §409.

Certainly it must be admitted that the installation was not ordinary repair, replacement or maintenance and an expenditure amounting to over a year's rental of an average apartment cannot be considered as a minor expenditure (at least by a landlord).

If the improvement had been determined to be a major capital improvement, there could have been no uncontrolled or excessive rents charged as a result thereof, for the Regulation expressly provided that in such an event the Administrator could reduce the rents either on his own initiative or on petition of the tenants. Thus no one would be deprived of any essential right or placed at any dis-

advantage by a ruling that the improvements in question were a major capital improvement.

On the other hand a ruling that they were not a major capital improvement created a crime out of otherwise innocent and proper acts; deprived complainant of compensation for the laundry equipment; embroiled complainant, Evelyn Flynn, respondent, and to a certain extent the tenants, in costly and almost endless litigation; subjected fifty odd families (tenants) to uncertainty and insecurity, and robbed the government of the normal revenue which it would have obtained from the proper operation of the property in question.

Complainant set forth 17 questions in his protest relating to the major capital improvements, and specifically requested respondent to answer them. The questions are designed to show whether or not the improvements in question are properly or reasonably to be considered as Major Capital Improvements under the Regulation. It would take a capable and honest man, familiar with the Regulations, only a matter of minutes to answer these questions. Although respondent admitted in his Intermediate Order (Tr. 138), that in passing on the validity of the Regulation he must first determine what it means, he has refused to answer the questions presented which are designed to show the true meaning and effect of the Regulation as related to complainant's property. Complainant has set these questions forth in the Appendix hereto and suggests and requests that respondent answer them in his brief in reply hereto.

Some of the questions bear upon the certainty or vagueness of the Regulations with regard to whether

said Regulations are sufficiently precise to afford due process. Respondent has stated in this connection that the District Court and the Circuit Court, "made a determination of certainty adverse to protestant's present contentions" (Tr. 345). Whatever the said courts may have stated in their opinion in relation to this matter was stated without jurisdiction thereof and should therefore be disregarded. The question of certainty or vagueness is a question of validity and pertains to validity. This Honorable Court has been given exclusive jurisdiction of such matters by the express provisions of the Act, and the District Court and Circuit Court may not consider them (Sec. 204(d) of the Act).

The ruling made as to the major capital improvements was itself a ruling made without authority since neither the Circuit Court nor the District Court had authority in making the decision to consider complainant's defense that a ruling adverse to complainant was an invalid application of the Regulation and that the Regulation as so construed and applied to complainant was invalid (see Exhibit J-1 and Exhibit J-5, at pp. 11-32 and Exhibit K-3, pp. 3-12, for further amplification; see cases and authorities cited under Part XV(4), pp. 77-82 hereof).

It is plain moreover that in considering how much the rent was raised after the improvement in question, the Circuit Court is actually bringing into question the propriety and validity of the Regulation itself. Under the Regulation if a major capital improvement is made, the first rent thereafter is the maximum rent unless and until changed by the Administrator. If an improvement is a major capital improvement at all, it fixes the first

rent thereafter as the maximum rent, whether that rent is more or less than the preceding rent and regardless of how much the rent is increased (subject only to the right of the Administrator on his own initiative or on petition of the tenants to reduce such rent).

II.

The Circuit Court placed an invalid construction upon Section 1388:1805(d) of the Regulation in order to affirm the conviction of complainant and the judgment of the District Court in the civil case.

This has already been established by respondent in his Intermediate Opinion (Tr. 132-144 at 139-140 and in his final Opinion, Tr. 343-344). For discussion of this point the Court is respectfully referred to Exhibits J-1, or J-5, at pages 26-29, and to Exhibit J-7, pp. 25-29, wherein is shown the theory of the case and the defense in support of which complainant requested that the jury be instructed concerning the provisions of Section 1388:1805 (d), supra. In view of the fact that it is now admitted that this provision does pertain to the determination of whether an improvement is in fact a major capital improvement and whether there was a change from furnished to unfurnished, it is clear that the construction placed thereon by the Circuit Court was erroneous. It now requires only the implementation of a suitable order or judgment of this Court to cause the setting aside of the judgments against complainant.

III.

Section 1388:1804 of Maximum Rent Regulation No. 28 (Section 4, Rent Regulation For Housing) and particularly subsections (a), (d)(3) and (d)(4) are not in accordance with law, being violative of the due process clause of the Fifth Amendment for vagueness and uncertainty.

(a) A violation of the Regulation by charging rents in excess of those established by the foregoing sections is a crime, and punishable as such under the provisions of Section 4(a) of the Emergency Price Control Act of 1942. (See Section 205(b) of said Act.)

(b) The Act and Regulation in operation against complainant and against any individual subject thereto is therefore a penal statute and subject to the requirements of due process.

(c) It is established law that a penal statute creating a new offense must be sufficiently explicit to inform those subject to it what conduct will render them liable for its penalties and a statute so vague that men of common intelligence must necessarily guess at its meaning, and differ as to its application, violates the due process clause of the Fifth Amendment to the Constitution of the United States. It is further established that persons may not be required at peril of life, liberty or property to speculate concerning the meaning of a penal statute, but all are entitled to be informed concerning what the state commands or forbids.

Connally v. General Construction Co., 269 U.S. 385;
Whitney v. People of the State of California, 274 U.S. 357;
Cline v. Frink Dairy Co., 274 U.S. 445;
Lanzetta v. State of New Jersey, 306 U.S. 451.

(d) The cited subsections each conflict one with the other and as construed by different persons and applied to complainant's property, establish three different and conflicting maximum legal rentals. This ambiguity and conflict could still exist if it were conceded that a major capital improvement and a change from fully furnished to unfurnished was made, as may be seen by the following.

All of the housing accommodations were rented on March 1, 1942; therefore, it is contended that Section 1388:1804(a) fixes the Maximum Legal Rental as, "the rent for such accommodations on that date (March 1, 1942)" (conceded by respondent in his Answer).

Forty-four of the housing accommodations in question were changed from fully furnished to unfurnished between March 1, 1942 and July 1, 1942 (Tr. 165). As to all housing accommodations so changed within that period, Section 1388:1804(d)(3) provides that the maximum legal rent shall be, "the first rent for such accommodation after such * * * change" (Tr. 165).

Fifty of the housing accommodations involved were substantially changed by the installation of the laundry equipment, a major capital improvement as distinguished from ordinary repair, replacement or maintenance. (Tr. 165-166). Subsection 1388:1804(d)(4), however, provides that where a major capital improvement has been made between March 1, and July 1, 1942, that the maximum legal rental shall be the first rent after such improvement:

> "PROVIDED, HOWEVER, that, where such first rent was fixed by a lease which was in force at the time of a major capital improvement, the maximum rent shall be the first rent after termination of such lease."

Since it is not unusual or impossible that housing accommodations which were rented on March 1, 1942, should thereafter and between said March 1, 1942 and July 1, 1942, be unfurnished (or furnished if it had been unfurnished on March 1, 1942) and also "improved" by a major capital improvement between those dates, it is obvious that the challenged provisions establishing as they do three different and distinct maximum legal rents are conducive to uncertainty and differences of opinion. This uncertainty and difference of opinion in the case of complainant resulted in depriving him of his liberty and property as shown by the facts hereinbefore set forth.

(e) The cited subsection (1388:1804(d)(3)) is further unlawfully vague and uncertain for failure to set forth what is meant by "changed from fully furnished to unfurnished". This provision has been interpreted by many persons, including the complainant, his attorneys and many others as referring to the manner in which the apartment is rented. It is contended by this school of thought that the rent regulation is a restriction upon landlords and regulates the relationship and obligations between landlords and tenants, and that this provision refers to the manner in which the landlord rents the housing accommodations, i.e.—if he rents it as a furnished apartment it is furnished within the meaning of the above subsection of the Regulation. It is contended by this school of thought that if the landlord disposes of the furniture and rents the apartment to the tenant as an unfurnished apartment, that there is then a change from furnished to unfurnished, and that it does not make any

difference whether the furniture is sold to the tenant and remains in the apartment or whether it is sold to a third party who rents or sells it to the tenant, or whether the furniture is removed from the apartment (Tr. 166-167).

On the other hand there are those persons who contend that this provision applies to the physical condition of the housing accommodations; that if the furniture is in the apartment it is a furnished apartment, and that in the case of the complainant even though he sold the furniture prior to the issuance of the rent regulation and no longer controlled same, that after the issuance of the Regulation he was required to again provide the very furniture which he had sold and no longer owned or controlled. It is contended by complainant and his counsel and by many other persons, that if this theory be a correct version of the meaning of the Regulation that it is an illegal *ex post facto* application of said Regulation since it cannot operate without setting aside a sale made prior to the issuance of said Regulation. It is also violative of the due process and just compensation clauses of the Fifth Amendment to the Constitution in its application to complainant and in its application against Evelyn Flynn, the purchaser of the furniture.

By reason of this uncertainty and vagueness complainant has been unconstitutionally deprived of his liberty and property (Tr. 167).

(f) Subsection (1388:1804(d)(4)) is unlawfully vague and uncertain for failure to define with clarity and certainty what is meant by

"substantially changed" and "a major capital improvement".

There is nothing in the Regulation to guide the complainant or any other person in the determination of what would constitute a substantial change or a major capital improvement except the words

"as distinguished from ordinary repair, replacement and maintenance."

By reason of this uncertainty and vagueness, complainant has been deprived of his liberty and property (Tr. 167).

(2) Section 1388:1804 is not in accordance with law, being violative of the Fifth Amendment, the purposes of the Act and the authority and duties imposed upon the Administrator.

(a) The maximum rents fixed thereby are not generally fair and equitable and do not effectuate the purposes of the Act, as provided by Section 2(b) of the Act. The Court is respectfully referred to the facts set forth in the Statement of the Case, and the data therein referred to.

(b) The maximum rents fixed thereby do not contain or provide for adjustments for increased costs or property taxes as required by Section 2(b) of the Act (Tr. 168).

(c) The maximum rents fixed thereby do not constitute just compensation for the premises and housing accommodations which complainant is required to rent under compulsion of Section 1388:1806 of the Regulation enforced against protestant by order of the Federal Court

in the case of *Bowles v. Taylor et al.* No. 22364-G, U. S. Dist. Ct. (Tr. 168).

As shown in the Statement of the Case, complainant has been compelled to operate at a loss.

IV.

(1) Section 1388.1805 of the Maximum Rent Regulation and particularly subsection (d) thereof (Section 5 (d), Rent Regulation For Housing) is violative of due process and unlawfully vague and uncertain in defining the rights and duties of the Administrator in the following respects:

(a) It does not define with certainty what is meant by

> "or any other fact necessary to the determination of the maximum rent",

or whether the words

> "or is in doubt, or is not known",

apply only to disputes between the landlord and the tenant or may also apply to questions raised by the Administrator or in controversy between a landlord and the Administrator.

(b) It does not indicate or provide any method by which the action of the Administrator may be invoked by the landlord after thirty days after the effective date of the Regulation if doubts or controversies should arise after the expiration of said thirty days, and thus fails to provide due process after such thirty days.

(c) It does not either include or exclude the determination of the question as to whether a capital improve-

ment might or might not constitute a major capital improvement within the meaning of Section 1388:1804(d)(4) of the Regulation, nor does it include or exclude the determination of the question as to whether an admitted improvement does or does not make a "substantial change" in the housing accommodations affected.

(2) The protested section is the only section in the Regulation by which disputed questions are to be resolved, and the vagueness cited above renders the entire Regulation invalid under the due process clause of the Constitution as applied to complainant or any other landlord who has made capital improvements between the maximum rent date and the effective date of the Regulation. For unless this section requires or provides for a determination by the rent director in such disputed cases, there is no method by which these questions may be determined in orderly process.

Connally v. General Construction Co., 269 U.S. 385;
Whitney v. People of the State of California, 274 U.S. 357;
Cline v. Frink Dairy Co., 274 U.S. 445;
Lanzetta v. State of New Jersey, 306 U.S. 451.

(3) Complainant has been deprived of his liberty and property by reason of the fact that he made capital improvements prior to the issuance of the Maximum Rent Regulation, and relied upon this section of the Regulation as imposing upon the Administrator the duty of determining by hearing and order whether in fact the capital improvements constituted a "major capital im-

provement'' if he, the Administrator, doubted that such improvements were major capital improvements when the complainant reported them to the Administrator as such (Tr. 169-170). Complainant's belief and understanding of the protested section of the Regulation was and is supported by the ruling of three judges given after they had ''carefully considered the procedural problem presented'', in the case of *Berndt v. Shaw,* O.P.A.Service 622:21. The Court in *Duval v. Mitchell,* O.P.A. Service 622:163, also specified cases involving major capital improvements as requiring a determination by the rent director.

Official O.P.A. Interpretation No. 9, now re-designated as Interpretation 4(d)-I specifically states this in unequivocal language, stating concerning the question of whether there has been a major capital improvement when the question is a ''close one'',—

> ''In such a situation there is, within the meaning of Sec. 5(d), doubt concerning a 'fact necessary to the determination of the maximum rent'. The Rent Director on his own initiative may determine this fact for purposes of establishing the maximum rent''. (Int. 4(d) I.)

The Circuit Court of Appeals for the Ninth Circuit in the case upon review here (*Taylor v. U. S.* No. 10346, C.C.A. 9) has adopted an entirely opposite view of this provision for the purpose of affirming the conviction of complainant, and if this view or construction of the section is tenable then it is obvious, in view of the previous conflicting interpretations thereof, that the provision is utterly void as applied to complainant for vagueness and

uncertainty, and that with it falls the previous sections (1388:1804(a) and 1388:1804(d) 3 and 4). (See Part I hereof.)

The Circuit Court in its opinion states concerning Section 1388:1805(d):

> "This subsection of the Regulation has no relevancy to the instant cause. The section merely states what may be done in those instances wherein a dispute arises between the landlord and tenant, or where there is doubt as to the actual rentals that should be charged for occupancy of the accommodations. Here there was no contention that there was any dispute between Taylor and his tenants relating to rents and whatever doubts may have arisen in the defendant's mind respecting rents that should have been charged for the apartments were, we think, effectually answered by the regulations."

(Tr. pp. 239-240 on Petition for Writ of Certiorari in the above cited cause (Exhibit J in this case). See also p. 247 of said Exhibit J for further remarks concerning the provision and evidencing that complainant relied upon same.)

Thus it must be conceded that either the Circuit Court of Appeals was totally in error in its construction of the protested section or that the section is wholly invalid for vagueness, uncertainty and lack of due process. See point II under Argument.

V.

(1) Section 1388:1806, of the Maximum Rent Regulation, which section in entitled "RESTRICTIONS ON REMOVAL OF TENANT" (Section 6, Rent Regulation For

Housing), is contrary to law being violative of the Prohibition of Section 4 (d) of the Act in that it does and has required this complainant to rent and continue renting his property here under consideration against his will and desire and to do so on terms and under conditions not previously existing in the property (Tr. 171, 225; see also Statement of the Case).

(2) It is contrary to law, being violative of the Fifth Amendment in that it deprives this protestant of the possession and control of his property here under consideration without due process or just compensation.

The foregoing is self-evident from the facts heretofore set forth in the Statement of the Case. This matter is set forth at greater length on pages 22-26 of Exhibit J-1, attested to Tr. 225, to which this Court is respectfully referred.

Complainant has been restrained from withdrawing his property from rental by the Federal District Court in the case of *Bowles v. Taylor, et al.*, heretofore cited, since November 9, 1942, and prior thereto was so restrained by the provisions of the Regulation itself (Tr. 172).

VI.

Section 1388:1809 of the Regulation, entitled "EVASION" is contrary to law.

(a) It is unlawfully vague, and has been used against complainant to require complainant to refund to purchasers of furniture from Evelyn Flynn sums of money paid by them to said Evelyn Flynn, as purchase price of said furniture on the theory that complainant had owned the

furniture on March 1, 1942 and was supplying it to tenants in furnished apartments at that time, and by reason of that fact, is now, and for as long as the Regulation is effective, obligated to provide said furniture to the tenants of the housing accommodations in question notwithstanding that complainant no longer owns the furniture, having sold same prior to the issuance of the rent regulation and with the consent and approval of the tenants then occupying the premises, separated the furniture therefrom and rented the apartments to said tenants by agreement with them as unfurnished apartments (Tr. 172-173, 225).

(b) It is *ex post facto* in its application to the complainant herein on the facts as set forth in (a) above and as relates to the sale of complainant's furniture to Evelyn Flynn on June 6, 1942.

(c) It is violative of the Fifth Amendment in compelling complainant and Evelyn Flynn to continue renting the housing accommodations in question with furniture, against their will and desire and without due process or just compensation.

(d) It is violative of the Fifth Amendment in prohibiting Evelyn Flynn from selling her furniture, and in holding complainant liable for any charges she may make therefor either on account of rentals or purchase price.

(e) It is violative of the Fifth Amendment in that it may be used to prohibit the sale of any property, if thereby the property is no longer to be rented. This construction of the provision is well within the broad terms thereof and has in effect been applied against complainant and Evelyn Flynn (Tr. 173).

(2) Coupled with the deprival of adequate judicial review, the provision is so broad and sweeping in its aspect and so conducive to interpretations to fit any desired objective of the Administrator, that it constitutes the Administrator or his Rent Directors or other agents as "petty tyrants" and subjects landlords to "personal government" instead of government by law (Tr. 173).

(See Mr. Justice Roberts in *Bowles v. Willingham*, 64 S.Ct. at 657, 321 U.S. 503, 88 L.Ed. 626.)

As stated by the Supreme Court in the case of *Yick Wo v. Hopkins*, 68 Cal. Rep. 294-306, 118 U.S. 356, 30 L.Ed. 220,

> "For, the very idea that one man may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself."

and in discussing the principles involved the Court there referred to the case of

Baltimore v. Radke, 49 Ind. 217,

wherein the court stated:

> "* * * In fact an ordinance which clothes a single individual with such power hardly falls within the domain of law, and we are constrained to pronounce it inoperative and void."

VII.

Sections 2(b), 2(c), 2(d), and 2(g) of the Emergency Price Control Act of 1942 are contrary to law and violative of the Constitution of the United States.

(1) (a) In each of the above designated sections of the Act, the Administrator is empowered to take action or

issue orders or regulations relating to the field of regulation there set forth, and under the terms of the Act as above cited, the provisions of such regulations or orders are limited within their respective field of operation only by the judgment or determination of the Administrator himself (Tr. 174).

(b) There is no restriction placed upon the powers of the Administrator that his orders or regulations shall not be in conflict with established law or constitutional restraints. In fact Section 305 of the Act seeks to set aside all existing law which might be construed to authorize action "inconsistent with the provisions and purposes of this Act" (Tr. 174).

(c) Under the provisions of Section 204(d) of the Act, any orders or regulations issued by the Administrator become operative against all designated persons, and have been made operative against complainant, and thereafter remain in full force and effect against such persons, including complainant, regardless of how flagrantly the said orders are violative of constitutional provisions, unless and until the aggrieved persons succeed in obtaining a favorable ruling from the Emergency Court of Appeals or from the Supreme Court of the United States pursuant to the Procedure and Review provisions of the Act (Sections 203 and 204) (Tr. 174-175).

(d) As applied to complainant, the broad powers and discretion vested in the Administrator by the provisions of the Act has enabled the Administrator to deprive complainant of his liberty and property without just compensation and without due process in violation of the Constitution of the United States and in violation of

specific limitations in the Act itself, including the limitations set forth in Section 4(d), Section 2(h) and Section 205(d). The Administrator has in fact deprived this complainant of his liberty and property in violation of the Constitution and the cited provisions of the Act (Tr. 175, 225).

The foregoing is self-evident from the facts set forth in the Statement of the Case and elsewhere herein. Respondent has not contested it or made any specific denial thereof.

VIII.

Procedure and Review provisions of the Emergency Price Control Act of 1942 (Section 203 and 204) are contrary to law and violative of the Constitution.

(1) As applied to complainant in the cases cited (upon which review is sought), the procedure therein provided is wholly unconstitutional for lack of due process.

(2) In application by this complainant and by Evelyn Flynn (in connection with the same property) the procedure and review provisions protested have been shown to be wholly inadequate to provide due process or just compensation, or to protect complainant from being unlawfully deprived of his liberty and property (Tr. 176).

(3) The procedure and review provisions have operated against this complainant to deprive him of his liberty and property without opportunity to establish, or raise as a defense in the trials thereon, the invalidity of the Regulation under which he was charged. Complainant contended that the Regulation under which he was charged (Max. Rent. Reg. 28) was invalid on its face and as

applied to complainant. Complainant had not waived his right to challenge the validity of the regulation

> "by the failure to make timely assertion of the right before a tribunal having jurisdiction to determine it,"

as it was implied that Albert Yakus and Benjamin Rottenberg had done, in the recent Supreme Court cases of *Yakus v. U. S.*, 64 S.Ct. 660, and *Rottenberg v. U. S.*, decided therewith, 321 U.S. 414, 88 L.Ed. 653.

Complainant fell within the exceptions specifically set forth by the Supreme Court in the above cited cases in that he was

> "forced to trial and convicted of violation of a regulation, while diligently seeking determination of its validity by the statutory procedure * * *". (64 S. Ct. 678.)

and on the further grounds that in the present case the Regulation is clearly unconstitutional and invalid on its face, a further exception noted by the Supreme Court in the same paragraph as the above quotation (p. 678) (Tr. 176).

Notwithstanding that the Supreme Court specifically ruled,—

> "Even though the statute should be deemed to require it, any ruling at the criminal trial which would preclude the accused from showing that he had had no opportunity to establish the invalidity of the regulation by resort to the statutory procedure, would be reviewable on appeal on constitutional grounds." (64 S.Ct. 678).

and notwithstanding that this was the exact effect and situation which arose at the criminal trial of complainant

at which time the Court ruled adversely to complainant and deprived him of the right to establish the full facts relating to his efforts to establish the invalidity of the Regulation, complainant has been deprived of relief upon these grounds upon appeal from the criminal judgment to the Circuit Court of Appeals for the Ninth Circuit (*Taylor v. U. S.*, No. 10,346 C.C.A. 9). In that appeal complainant again sought to establish the invalidity of the Regulation and showed that he had been denied adjudication of the constitutional questions involved by the Emergency Court of Appeals (Tr. 176-177).

(4) The procedure and review provisions are clearly invalid on those grounds which were set forth by the Honorable Mr. Justice Rutledge and Mr. Justice Murphy and Mr. Justice Roberts in their separate opinions in the *Yakus* case above cited and in the case of *Bowles v. Willingham*, 321 U.S. 503. It is to be noted that the objections of these Honorable Justices of the Supreme Court to such procedure, particularly as related to a criminal trial was not refuted by the majority opinion in those cases. In the *Yakus* and *Rottenberg* cases the Court held that it was a question which was not before them at that time, since it was held that the petitioners in those cases had forfeited their right to raise the question or challenge the validity of the Regulation there involved. As we have heretofore stated this complainant has not forfeited or waived his rights (Tr. 177).

(5) By the protested procedure complainant was deprived of a speedy and public trial by an impartial jury (or court) of the State or district where the alleged offense was alleged to have been committed, in the case of

U. S. v. Taylor, No. 27815-S, So. Div. U. S. Dist. Ct. No. Dist. Calif., review of which case is sought herein. By Section 204(d) of the Act, the Court in which the questions of fact were to be determined was deprived of the right to consider the constitutional questions of validity of the challenged Regulation either as to its validity in general or on its face, or as to its validity as applied to complainant under the facts as disclosed by the evidence (Tr. 177-178).

As to the constitutional questions involved, complainant was compelled (under the protested procedure) to seek adjudication of these questions in the Emergency Court of Appeals, about 3000 miles removed from the place of the alleged crime and where complainant was imprisoned following his conviction until he was able to obtain $2500.00 cash bail and counsel to secure his release pending appeal to the Circuit Court of Appeals (Tr. 178, 225).

The trial Court was informed at the trial that complainant was seeking adjudication of said constitutional questions at the time of the trial and that said complainant was without counsel for financial reasons. The prompt imprisonment of complainant on a six-month sentence would have resulted in a forfeiture of any trial on the constitutional issues if complainant had been unable to secure his release on bail or obtain counsel, since he could not prosecute his case from the jail. Thus, complainant was already imprisoned and punished before adjudication of the questions of law involved, and subsequently the Emergency Court of Appeals refused to accept or consider the evidence necessary to an adjudication of said questions and refused to pass upon said

questions at all as related to complainant and his trial and the questions of law there raised (Tr. 178, 225; Ex. J-1, pp. 6-8).

The record of the Emergency Court of Appeals and the fact that it is a court created by, and to effectuate the protested procedure, establishes that it is not an impartial court. Its existence depends upon a decision adverse to complainant on the adequacy of the procedure protested. The Court is further restricted in its powers and in what it may consider. (Section 204(a), (b) and (c) of the Act) (Tr. 178-180, 225).

The record of this Court is a question which complainant deems improper of consideration by this Honorable Court. Complainant further believes it to be unnecessary of consideration in the instant case, but suggests that it should be reserved for consideration by the Supreme Court, should it be necessary to refer this case to that Court. Complainant trusts and hopes that his conclusion previously reached by reason of the facts set forth in the transcript (Tr. 178-180) is erroneous.

IX.

Enforcement Provisions of the Emergency Price Control Act of 1942 and particularly Section 205(a), 205(b) and 205(c) of said Act are invalid and violative of the Constitution.

(1) The above cited provisions enable the Administrator to enforce his orders and regulations and to punish persons (including complainant) who may be accused of violating said orders or regulations, notwithstanding that all such persons (including complainant) are deprived of

the right to show that the regulation or order in question is invalid either on its face or as applied to the accused. The statements, facts and arguments set forth under VIII above are hereby adopted in amplification and support hereof.

(2) In application to complainant, said provisions have deprived him of his liberty and property without due process and without just compensation, and compelled said complainant to rent his property against his will and desire and at heavy financial loss, contrary to the provisions of Section 4(d) of the Act (Tr. 181, 225).

(3) Congress may not constitutionally confer upon a court the right to try a case and punish a person convicted therein, and at the same time deprive said court of the right to hear and adjudicate questions of law raised therein by way of a defense to the charges made.

(4) Section 204(d) of the Act deprives every court of jurisdiction of enforcement and criminal cases where the question of the validity of the regulation or order is properly raised by the defendant and where said defendant has not previously forfeited or waived the right to challenge the validity of said regulation or order. The jurisdiction purportedly given by Section 205(c) of the Act is removed by Section 204(d) where the validity of the order or regulation is challenged.

(5) A court sworn to preserve and protect the Constitution of the United States may not be compelled to evade and nullify it by depriving said Court of the right to test by its provisions the application of challenged regulations or orders to persons and facts in cases brought before said Court for trial or adjudication. If the Court may not

decide the questions of law involved in a case or in some manner obtain a determination thereof, and so render a judgment based upon law and not upon a mere presumption that a challenged law or order is valid, then the Court is deprived of jurisdiction of said case when the question of validity is raised.

People v. Max, 70 Colo. 100, 198 Pac. 150;
Bailey on Jurisdiction, p. 11;
Ex parte McArdle, 19 L.Ed. 264.

See, also:

Tot v. U. S., 319 U.S. 463.

X.

Section 205 f(2) of the Act, which provides for a Warning Notice By Registered Mail is unlawfully vague and uncertain, and by reason thereof complainant has been denied due process under the Act and Regulation.

Said provision reads in part as follows:

> "(2) Whenever in the judgment of the Administrator a person has violated any of the provisions of a license issued under this subsection, *or has violated any of the provisions of any regulation, order, or requirement under section 2* or section 202(b), or any of the provisions of any price schedule effective in accordance with the provisions of section 206, which is applicable to such person, *a warning notice shall be sent by registered mail to such person.*"

(1) The vagueness and uncertainty of the foregoing provision also makes invalid for lack of due process the Maximum Rent Regulation No. 28, which is a regulation issued under Section 2 of the Act and included in the above cited regulations. (See Part III, (1)(c) hereof.)

As stated in Part III, (1)(c) hereof, persons may not be required at peril of life, liberty, or property to speculate concerning the meaning of a penal statute, but all are entitled to be informed concerning what the state commands or forbids. A statute so vague that men of common intelligence must necessarily guess at its meaning, and differ as to its application, violates due process.

The foregoing provision states and provides that *whenever in the judgment of the Administrator a person has violated any provision of any regulation under Section 2 of the Act (which includes all rent regulations)* **that a warning notice shall be sent by registered mail to such person.**

This provision which complainant has heretofore relied upon refers to violations of Rent Regulations under Section 2, as distinct and opposed to violations of licenses issued under subsection (f) of Section 205, setting forth the distinction by the coordinating conjunction "or". The Circuit Court of Appeals for the Ninth Circuit, however, has ruled that this does not refer to violations of regulations under Section 2, but only to violations of licenses. (See opinion in *Taylor v. U. S.*, No. 10346, C.C.A. 9; Ex. J, pp. 241, 215-221 at 217-219.) Thus it is seen that the provision is open to conflicting judgment and is plainly invalid for uncertainty.

(2) The effect of this uncertainty and ambiguity and the manner in which it makes invalid the regulation for lack of due process as applied to complainant, is as follows:

(a) As heretofore set forth in Parts III(1)(d), III(1)(e), III(1)(f), IV and VI hereof, the regulations themselves

are conducive to conflicting interpretation and this is also evidenced by the fact that the Administrator has been overruled by the District Court on several counts in the case of *Brown v. Taylor et al.*, No. 22364 W., now *Bowles v. Taylor et al.*, No. 22364 G, review of which is sought herein. (See, also, *Henderson v. Morgan*, U. S. Dist. Ct. D. Utah. O.P.A. Ser. 622:72-75.)

Complainant herein reported to the Administrator the manner in which he was operating his property; reporting on August 14, 1942, by registered mail that he had changed his apartment from furnished to unfurnished by agreement with his tenants; and reporting by signed stipulation on August 27, 1942, that he had installed a major capital improvement in the premises for the benefit of the apartments in question. Each of the foregoing changes have a bearing on the effective maximum legal rental of the apartments in question under Section 1388:1804(d) of said Regulation.

Complainant believed that he was operating his property in accordance with the provisions of the Regulation and so stated his belief and his intention to comply with the Regulations to the Administrator.

Complainant believed, and relied upon Section 205(f)(2) of the Act in support of his belief, that it was the duty of the Administrator to inform him if in the judgment of the Administrator he (complainant) was violating the Regulation in respect of these matters concerning which the Administrator was fully informed (Tr. 184, 225).

The Administrator or his agents were fully informed as to the basic facts and issues involved since June 10, 1942 and since and after that time said Administrator or his

agents were kept informed from time to time of the manner in which the property involved was being operated (Tr. 184).

Notwithstanding this (that the Administrator was so fully informed) he, the Administrator, permitted complainant to continue until November 9, 1942, in the belief that he was operating his property under rentals in conformity with the Regulation without word or suggestion after the letter of August 14, 1942, or the stipulation of August 27, 1942, that in the opinion of the Administrator the rents charged were improper or illegal. On November 9, 1942, the Administrator filed an action against complainant seeking to enjoin him from alleged violations of the Regulation, and on December 11, 1942, a criminal Information of 21 counts was filed against complainant at the behest of the Administrator, charging criminal violations of the Regulation covering a period of time from October 1, 1942 to November 8, 1942, all prior to any warning or indication whatsoever from the Administrator that the rents in question were improper, or that in the opinion of the Administrator the improvements made by complainant were not in fact major capital improvements under the Regulation (Tr. 184-185, 225).

(b) There is no other provision in the Act or in the Rent Regulation by which the landlord is to be informed with certainty as to the judgment of the Administrator concerning the application of the Rent Regulation to his property. Complainant was justified in relying on this provision (Section 205f(2)). By reason of the fact that it can be construed contrary to the simple and ordinary meaning seen therein by complainant and imputed thereto

by numerous attorneys and grammarians with whom complainant has consulted since the question was first raised by the Administrator, complainant has been deprived of his liberty and property without due process and without just compensation (Tr. 185, 225; Ex. J-2, pp. 46-48; Ex. J-3, pp. 32-33, etc.).

In short, by reason of the vagueness and ambiguity of the protested provision, complainant has been entrapped and deprived of liberty and property; he has been deprived of any knowledge as to what the Administrator demanded of him, or that the Administrator considered his improvements were not in fact major capital improvements. The Administrator knowingly, willingly permitted complainant to operate his property under rentals reported and believed by complainant to be established under Section 1388:1804(d) of the Regulation for a period of more than four months and then without giving complainant any warning or opportunity to adjust his rentals or determine the disputed questions, the Administrators sought to overwhelm complainant with litigation and have him confined in prison. The motive for these actions on the part of the Administrator is connected with the fact that complainant filed a protest against the Regulation on August 27, 1942, and announced on October 1, 1942, that he intended to appeal from the denial thereof by the Administrator, to the Emergency Court of Appeals, and from thence to the Supreme Court (Tr. 185-186).

The threats of "lots of litigation" made by the attorney for the Administrator and connected with complainant's announcement that he was going to appeal from the denial of his protest, was not denied by the Administrator, but

was rather affirmed in the written Opinion of the Administrator's presiding officer in Protest 15, Region VIII, wherein it was stated:

> "In view of the contents of this booklet (which set forth the text of the protest and announced that it was to be appealed), we conclude that Mr. Gills' statement that protestant was going to have lots of litigation was a justifiable prophecy and was not intended as a threat."

Thus it is seen that all the subsequent litigation which did not on its face involve the contents of the booklet or anything connected therewith was in actual fact motivated on the part of the Administrator on the fact that complainant had publicly protested the Regulation and conduct of said Administrator (Tr. 186, 225).

The records of all the litigation subsequent to October 1, 1942, excepting only the appeal from the original protest filed by complainant on August 27, 1942, shows that all said litigation involved interpretations of the Regulations and the question as to whether an admitted capital improvement is in fact a major capital improvement under the Regulation. If the Administrator had issued a warning notice under Section 205f(2) of the Act so that complainant could know that his rentals were considered to be in violation of the Regulation, or if the Administrator had held a hearing or determined the maximum legal rentals applicable to the property in question by determining whether the capital improvement was in fact a major capital improvement, and whether the apartments in question were legally changed from furnished to unfurnished, or whether complainant was in fact liable and responsible

for charges made by Evelyn Flynn as owner of the furniture involved, no litigation whatsoever would have been necessary, and the entire controversy, if there was in fact any real controversy, could have been settled in a few hours at most, with a great saving of expense to the nation and to complainant. The fact that the Administrator refused to determine these questions and settle the matter by administrative process when he was requested to do so by complainant prior to the filing of the criminal action evidences the desire of the Administrator to litigate rather than reach a speedy, economical and just solution of the questions involved (Tr. 187, 225).

The vindictive desire of the Administrator to impose punishment upon complainant is evidenced by the facts of Count 15, in the criminal action here under review. On that count complainant was charged with having demanded and received $10.00 as and for rent for the premises in question for one week beginning on or about November 8, 1942 and it was alleged that $40.00 per month was the maximum legal rent. It was shown at the trial that the use of laundry equipment costing $500.00 to install, had been provided this tenant between the Maximum Rent Date and the effective date of the Regulation, and complainant set up as his defense that this laundry equipment constituted a major capital improvement and that $40.00 per month was not the maximum legal rental under the Rent Regulation (Section 1388.1804(d)(4); Tr. 187-188, 225).

Complainant further showed, and the tenant admitted, that said tenant had refused to pay the rent charged him and that he had been notified to vacate the premises. As indicated by the testimony and evidence, David C. Dun-

lap, Chief Enforcement Attorney for the Administrator, requested complainant to delay proceedings upon the eviction and an agreement was reached between said David C. Dunlap, Attorney for the Administrator, the tenant, and complainant herein, whereby the tenant could stay on in the premises, temporarily at least, and pay $10.00 per week *on account,* which amount was to be entered in complainant's books "as deposits on account of rent and other charges" until such time as the tenant vacated or other action was taken. Said David C. Dunlap, O.P.A. Attorney, requested this arrangement for two reasons: (1) He stated that he felt a personal responsibility for the tenant's welfare because of the fact that he had advised the tenant not to pay the rent, and he felt that under those circumstances if the tenant was evicted that he, Dunlap, would be obligated to take him into his own home. (2) Mr. Dunlap stated that he wanted an opportunity to consult the Washington office of the Office of Price Administration concerning the questions involved in the case and concerning which he himself was in doubt (Tr. 188, 225).

No ruling was ever issued by the Office of Price Administration determining that the laundry was not a major capital improvement, but an Interpretation (No. 77) was issued on December 11, 1942, in which it was stated that under circumstances similar to those in operation in complainant's property there was not a change from fully furnished to unfurnished within the meaning of Section 4d(3) of the Regulation. While this Interpretation, if valid, would have no effect upon complainant's rents which were fixed by the major capital improvement made on June 27, 1942, it was apparently considered by the Ad-

ministrator that it would serve his purposes as a ground for litigation against complainant, for on the same day that the Interpretation was issued (December 11, 1942) the Administrator caused the criminal Information to be filed against complainant, charging him with twenty-one counts involving a possible fine of $105,000.00 and twenty-one years in prison. The Interpretation was not even then sent to complainant and he was deprived of all knowledge of it until after his trial. It was not released in the O.P.A. Service for more than sixty days, thus depriving complainant of the right or opportunity to protest it in accordance with the provisions of Section 203 of the Act. The offenses charged under the presumed authority of said Interpretation were for rents collected from October 1, 1942 to November 8, 1942; thus, even if complainant had known of the Interpretation and if it had in fact changed his maximum legal rents he was given no opportunity to adjust said rents and thus avoid criminal prosecution. Upon trial of the case, complainant was found guilty on Count 15 for having accepted the $10.00 deposit in accordance with the arrangements made with Mr. Dunlap, the O.P.A. Attorney. Complainant was fined and sentenced to six months' imprisonment for this offense. Complainant was found to be not guilty of attempting to unlawfully evict the tenant (Tr. 188-189, 225).

The facts here presented show the necessity and propriety of some such provision as Section 205 f (2) whereby the Administrator is required to send a warning notice by registered mail whenever in his judgment a person has violated a regulation or order. Under the facts of

the cases here on review complainant was deprived of any warning or ruling by the Administrator and could not know that his rents were in conflict with the regulation, if they were. Complainant relied upon this Section (205 f (2)) of the Act and by ruling that it does not apply to violations of rent regulations notwithstanding that the section specifically refers to any regulation issued under Section 2 of the Act which does include rent regulations, the Circuit Court of Appeals for the Ninth Circuit has shown that the provision is unlawfully vague and uncertain. The trial court erred in refusing to instruct the jury as to this provision of the Act upon request of complainant.

XI.

Section 4(a) of the Act is violative of the Constitution in requiring compliance with Maximum Rent Regulation No. 28, the same being invalid on its face and as applied to complainant and complainant's property. The invalidity of the Regulation is shown elsewhere herein. Said Section 4(a) is also *ex post facto* as to contracts entered into prior to the enactment thereof or prior to the issuance of the Regulation which it seeks to enforce. Included among such contracts are those made between this complainant and his tenants concerning the renting of the property involved, and complainant's contract with Evelyn Flynn concerning the sale of the furnishings in said property.

XII.

Section 305 of the Act is plainly invalid on its face, in purporting to set aside the effectiveness of all law, including the Constitution of the United States, which might be properly construed to authorize action inconsistent with the provisions and purposes of the Act. The regulations here under consideration and as applied to complainant by the Administrator clearly show that it is the intent and purpose of the Administrator to disregard all constitutional restraints. In view of the facts hereinbefore shown this needs no further showing.

XIII.

Official O.P.A. Interpretation 4(d)-I entitled Procedure Where There Is Doubt as to Whether a Major Capital Improvement Has Occurred (Issued July 6, 1942) is invalid. Complainant's objections to the above designated Official Interpretation are as follows:

(1) That it purports to be an interpretation of general applicability, and designates the procedure set forth under Section 5(d) of the Maximum Rent Regulation (Housing Regulation) as the proper procedure for determining the question as to whether there has been a major capital improvement when the question is a close one. It also states that the rent director may determine this fact on his own initiative "for purposes of establishing the maximum rent."

In so specifying Section 5(d) of the Regulation as encompassing the determination of questions involving major capital improvements, and in stating that the rent director may determine these facts on his own initiative, the Interpretation, supra, (a) is erroneous; (b) is unlaw-

fully vague; (c) is void of force and authority; (d) constitutes entrapment by reason of the facts set forth in (a), (b) and (c) by reason of the fact that there appears to be no proper, speedy or effective way in which the Interpretation may be applied or enforced, or by which recognition thereof may be required under appropriate circumstances or in proceedings where the same is relevant or applicable.

(2) Complainant has been deprived of liberty and property by reason of having placed reliance upon this Interpretation and has been held liable for penalties in Federal Court because of his reliance in good faith upon the provisions of this Interpretation and because he acted upon the assumption that the said Interpretation was effective and correct (Tr. 190-191, 225).

As set forth under Part IV hereof the Circuit Court of Appeals for the Ninth Circuit has ruled that Section 5(d) does not apply to the determination as to whether the capital improvements made by complainant and claimed by him to be major capital improvements were in fact major capital improvements.

The government contended that Section 5(d) did not apply to the determination of questions involving major capital improvements. Complainant in his reply brief in the cited case set forth the Interpretation here under discussion as showing that Section 5(d) did apply, but the position of the government was sustained by the Court adversely to complainant and contrary to Interpretation 4(d)-I (Tr. 191-192, 225).

XIV.

Official O.P.A. Interpretation 5(a)(1)-I ELEMENTS OF MAJOR CAPITAL IMPROVEMENT, originally published on August 3, 1942, is unlawfully vague.

(1) Complainant's objections to this Interpretation are related to the objections set forth in Parts III, IV and XIII hereof as to the objections therein set forth which apply to vagueness, uncertainty, lack of due process in the determination of what does in fact constitute a major capital improvement, and the ineffectiveness, and entrapment caused thereby, for which reason all objections therein stated applicable to this question are hereby incorporated herein as objections to Interpretation 5(a) 1-I.

(2) It has proven to be—

(a) Unlawfully vague;

(b) Ineffective and void of force and authority; in determining whether the capital improvements installed by complainant were in fact major capital improvements.

The Circuit Court of Appeals for the Ninth Circuit, in order to affirm the judgment against complainant in the case of *Taylor v. U. S.*, No. 10346, C.C.A. 9, was obliged to and did depart from the tests set up by this Interpretation and consider numerous factors not mentioned in either the Regulation or the Interpretation in support of its findings that the improvements made by complainant were not major capital improvements (Tr. 192-193, 225).

The ruling of the Circuit Court of Appeals in the criminal case and the ruling of the District Court in the civil case here under review and consideration was contrary to the Interpretation here under discussion, and estab-

lished that the Interpretation is ineffective and constitutes entrapment (Tr. 193).

This is shown by the following facts. The improvements made by complainant were different from ordinary repair, replacement and maintenance. The principal improvement involved structural additions, the installation of plumbing and lighting where it did not previously exist, the clear addition to the housing accommodations of a new area for the use of the tenants with automatic laundry equipment installed therein, which had not theretofore been provided to the tenants. It was uncontroverted that the use of the equipment saved the tenants from $4.00 to $8.00 per month and in addition to the saving in money was a great convenience and time saver to them (Tr. 193).

The improvement resulted in an added feature which did not exist prior to the installation (or change). It would normally result in an increase in the rental value. Under the Interpretation here under discussion it would be a substantial change by a major capital improvement and since it was installed between March 1, 1942, and July 1, 1942, it would automatically fix the maximum rents as those provided for by Section 1388:1804(d)(4) of the Regulation. Additional major capital improvements were made by complainant which complied explicitly with the tests laid down by this interpretation, but the courts, upon argument of O.P.A. counsel and government attorneys, have refused to be guided by the Interpretation, supra (Tr. 193).

Complainant relied thereon, and was thereby deprived of his liberty and property in violation of the Fifth Amendment and in violation of 205(d) of the Emergency

Price Control Act (Section 1300:241, Revised Procedural Reg. 3; Tr. 193-194).

XV.

On General Validity

1) Considered as a whole, it is plain that respondent has had conferred upon him an unlawful and unconstitutional power over the citizen. The procedure and right of review is too heavily weighted against complainant and against the average citizen to ensure due process of law (Tr. 194, 225).

(2) The procedure does not grant a review by the Supreme Court as a matter of right. The Supreme Court cannot and does not attempt to adjudicate every case which is presented to it by petition for writ of certiorari. Thus the citizen may be deprived of a trial by an impartial court with power to adjudicate the question of law involved (Tr. 195).

(3) The objections under (1) and (2) hereof were substantially raised in Part VIII hereof as relating to the Procedural and Review provisions of the Act;. the point here made is that if an adequate means of adjudicating the validity of the orders and regulations is not provided then said orders and regulations may not be constitutionally enforced. See Mr. Justice Rutledge in the *Yakus* case (64 S.Ct. 660 at 688 and 689) from which the following quotation is taken:

> "Clearly Congress could not require judicial enforcement of an unconstitutional statute. The same is true of an unconstitutional regulation. And it is conceded that Congress could not have compelled judicial enforcement of all price regulations, without

regard to their validity, if it had not given opportunity for attack upon them through the Emergency Court **OR IF THAT OPPORTUNITY IS INADEQUATE".**

Yakus v. U. S., 321 U.S. 414, 88 L.Ed. 653.

(4) What applies to the enforcement of the rules and regulations themselves, applies with greater force to the enforcement of the judgments of the District Courts in the cases of *U. S. v. Taylor*, No. 27815-S and the civil suits which are under review herein. The first judgment as affirmed by the Circuit Court of Appeals, has brought into issue numerous constitutional questions. As set forth in the transcript, pp. 160-162, complainant has heretofore sought adjudication of many of the constitutional questions presented by said case. He has sought this adjudication by the methods and procedures of the Act, and has been denied such adjudication by the Emergency Court and by the Supreme Court (Tr. 196, 225).

Complainant had not waived or forfeited his right to challenge the validity of the Regulation as it was held by the Supreme Court that Albert Yakus and Benjamin Rottenberg had done. Therefore the judgment of the District Court here under consideration and the judgment of the District Court in the civil case also are each void and unenforceable under the Fifth Amendment and under the Sixth Amendment to the Constitution, for lack of due process and constitutional trial thereof. Complainant was deprived by the Administrator of any rulings or findings of fact, or orders from the Administrator himself or from the rent director relating to the question in controversy. Instead of issuing any such orders or rulings (which com-

plainant would have obeyed and which he could have appealed from under the procedure of the Act) the Administrator obtained the orders and judgments against complainant from the federal district courts. *No procedure is provided in the Act or in the Procedural Regulations whereby an order of the District Court or a judgment thereof may be reviewed by the Emergency Court of Appeals. When that judgment is issued under a Regulation invalid on its face or the Regulation is thereby applied to complainant in an invalid manner, the judgment may not be reviewed as such by any court insofar as the questions involve the validity of said Regulation* (Tr. 197).

If such a judgment involving imprisonment or fine, or the taking of property, could be certified under the Act to the Emergency Court of Appeals for examination of the constitutional questions involved *before imposition of punishment,* this complainant would concede that on the face of such procedure, denial of due process would not be apparent but would depend upon the circumstances of the case and the manner in which it was adjudicated. Such is not the case, however. The Act precludes this procedure by the provisions of Sections 203 and 204 of the Act (Section 204(d); Tr. 197).

Under the procedure of the Act only orders or regulations of the Administrator may be protested, not orders or judgments of courts, and until denial or partial denial of such protest, no person may appeal to the Emergency Court. The Emergency Court is restricted in its review and consideration to matters contained in the original protest or in the Transcript of Proceedings to be filed by the Administrator (Section 204(a)).

Thus, in order that a review or adjudication of constitutional questions may be had where they involve the validity of regulations and where they are raised for the first time by the judgment of a court other than the Emergency Court of Appeals, the aggrieved person must seek relief first by a protest to the Administrator directed against the Regulation itself and not directed against the Judgment of the Court. This does not appear to be a constitutional adjudication of questions upon which the liberty and property of a person may depend. The Administrator is not given authority under the Act, nor is the Emergency Court of Appeals given authority, to set aside a judgment of a Federal District Court once such judgment is passed (Tr. 197-198, 225).

As related to complainant, who filed his original protest against the Act and Regulations on August 27, 1942, and whose complaint was on file in the Emergency Court of Appeals when suit was instituted against him in the Federal Court by or on account of the Administrator, the Federal Court was without jurisdiction to proceed with such suit, either civil or criminal, by reason of the restrictions of Section 204(d) of the Act. Jurisdiction of the case is taken from the court by Section 204(d) of the Act whenever a constitutional question arises based upon or involving the validity of the Regulation or the procedure involved, for if the Court may not pass upon these constitutional questions, it may not assume that the Regulation is valid once the question is raised. It is only against persons who waive or have forfeited their right to challenge the validity of regulations or orders that a District Court may proceed to judgment. A judgment en-

tered on the mere presumption that a regulation or order is valid when the validity thereof has been challenged and may not be determined by the Court is a judgment violative of due process and void.

If the Emergency Price Control Act or the regulation which appellant was accused of violating, was unconstitutional, then appellant could have committed no crime.

11 *Am. Jur.*, 831:

"* * * It has been decided that an offense created by an unconstitutional law is not a crime. A conviction under it is not merely erroneous, but is illegal and void and cannot be a legal cause of imprisonment; * * * ".

Bailey on Jurisdiction, p. 12:

"* * * An unconstitutional law is void. An offense created by it is not a crime."

Ex parte Siebold, 100 U.S. 371, 25 L.Ed. 717:

"An unconstitutional law is void, and is as no law. An offense created by it is not a crime. A conviction under it is not merely erroneous, but is illegal and void, and cannot be a legal cause of imprisonment."

Unless the District Court was given full jurisdiction or means to determine whether a crime had been committed, then it had no jurisdiction to try an alleged offender for that crime.

The term "jurisdiction" has often been defined by the courts. But in all of its varied definitions the essence of the term is the concept of completeness, the right to decide all pertinent questions of law, the right to declare without restriction the law applicable to the case, the right to decide the case according to established rules of law, or the

right to decide all questions of law that may arise in a particular case.

Ex parte McArdle, 19 L.Ed. 264:

"* * * Jurisdiction is the power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause. And this is not less clear upon authority than upon principle."

General Investment Co. v. N. Y. Central R.R. Co., 70 L.Ed. 920:

"* * * By jurisdiction we mean power to entertain the suit, consider the merits and render a binding decision thereon; and by merits we mean the various elements which enter into or qualify the plaintiff's right to the relief sought."

In re McMurray, 8 Fed. Supp. 449, 452:

"* * * Jurisdiction means the authority or power which a man has to do justice in causes of complaint brought before him; the power and authority to declare the law."

Morrow v. Corbin, 62 S.W.(2d) 641, 644:

"* * * The jurisdiction of these trial or inferior courts, without any exception, embraces the 'power to hear and determine the matter in controversy according to established rules of law, * * *'."

Williams v. Williams, 125 S.E. 482, 483:

"* * * The word 'jurisdiction' as applied to courts imports a legal controversy; the power to hear, determine, and pronounce judgment on the issues before the court, or to inquire into the facts, to apply the law, and to render judgment. * * *".

Bailey on Jurisdiction, p. 11:

"* * * It is conceded as a general rule that a court of general jurisdiction has the power to decide all questions of law that may arise in the particular case. *That the question of the validity of any law that may be applicable must be decided, when the question is raised, in the first instance by the court which is proceeding with the trial.* * * *".

The thought of a Court having power to convict and punish for a crime and yet not having power to determine whether a crime has in fact been committed, is abhorrent to our system of jurisprudence.

35 *C. J. S.*, 777, 787:

"* * * Statutes conferring jurisdiction on federal courts are to be strictly construed; and statutes withdrawing or restricting jurisdiction are to be applied to pending cases * * *. The presumption is against the jurisdiction of a federal court in any particular case, throughout the case and at every stage thereof, unless and until the contrary affirmatively appears. * * * ".

It is the duty of Courts to dismiss actions before them when it is found that they lack jurisdiction.

Congress, by enacting Section 204(d) of the Emergency Price Control Act, has taken away from District Courts the power to hear and determine criminal cases where the constitutionality of the Regulation is properly raised, and not yet determined. And this determination, to permit an adjudication of the case by the District Court, must extend to each provision of the Act or regulation challenged and applicable to the case at bar. Not only

must the regulation be determined to be valid on its face, but it must be valid as applied to the accused under the facts and circumstances of the case.

The Constitution does not make judicial observance or enforcement of its basic guaranties depend on whether their violation appears from the face of legislation or only from its application to proven facts.

Snowden v. Hughes, 321 U.S. ....., 64 S.Ct. 397;

Yick Wo v. Hopkins, 118 U.S. 356, 373, 374, 6 S.Ct. 1064, 1072, 1073, 30 L.Ed. 220;

United States v. Carolene Products Co., 304 U.S. 144, 152-154, 58 S.Ct. 778, 783, 784, 82 L.Ed. 1234.

It is the duty of the Federal Court in the first instance to determine whether the offense charged is within its jurisdiction.

22 *C. J. S.,* 203:

"* * * In accordance with the rule applicable to criminal courts generally, see supra §108, a federal court may and should, in the first instance, determine whether the offense charged is within its jurisdiction. * * *".

When it is found by the Court that jurisdiction has ceased to exist, the only remaining function is the dismissal of the cause.

Ex parte McArdle, 19 L.Ed. 264:

"* * * Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause. And this is not less clear upon authority than upon principle."

If the Court cannot determine the validity of the Regulation as applied to the accused, then it can have no way of determining if a crime has been committed. In such a case it has no jurisdiction to hear and determine the cause. The Court has been placed in the position discussed in the case of *People v. Max*, 70 Colo. 100, 198 Pac. 150, from which we quote:

> "* * * *If the denial of power in the trial court to hold a law unconstitutional be interpreted as a denial also of its power to hold it constitutional, a denial of power to hear and adjudicate the question at all, then one who raises a constitutional question thereby ousts the court of jurisdiction. His cause can never be heard, and 'due process of law' is denied him.* 'Jurisdiction has been defined as * * * the power to hear and determine issues of law and of fact * * * the power and authority to declare the law * * * the authority to judge or to declare the law between parties brought into court. * * *' 15 C.J., 723, §13. 'As jurisdiction is the right to adjudicate concerning the subject-matter of a given case, loss of jurisdiction will result when the power of the court is terminated or the subject-matter destroyed or withdrawn'. 7 R.C.L., p. 1042, §79. 'Upon determining that it has no jurisdiction the court may not only refuse to proceed further and determine other objections or the rights of the parties, but it is also improper to decide upon the sufficiency of other matters of defense, and a judgment or dismissal for want of jurisdiction or without prejudice should be entered, after which the court has no authority to proceed'. 15 C.J., p. 854, §176.
>
> Jurisdiction is invoked by the allegations of an information, petition, or complaint; but, if prior to final

judgment a matter arises judicially which discloses that the apparent jurisdiction of the court no longer exists, the action should be dismissed for want of jurisdiction, or transferred to a tribunal having such jurisdiction. D.W. & P. Ry. Co. v. Church, 7 Colo. 143, 2. Pac. 218. *It is therefore apparent that if the trial court in the instant case was without power to decide the constitutional question raised, one way or the other, it could only dismiss the cause because no other court existed in which it could be tried.* * * *".

The entire Colorado Supreme Court concurred in the decision of this case. Its conclusions are unanswerable.

(5) The Act and Regulation may not be enforced gainst complainant in the cases under consideration by reason of the invalidity of the procedure involved and specified by the Act as shown in (4) above, and enforcement of the judgments is further prohibited by Section 205(d) of the Act, as construed by Section 1300:241 of Revised Procedural Regulation No. 3. See, also, Section 1300:243 of said Procedural Regulation. Complainant relied upon the Regulations and Interpretations heretofore set forth, and acted in reliance thereon in collecting the rents from his tenants which he deemed appropriate under those Regulations and Interpretations (Tr. 198-199, 225).

(6) The Act and Regulations are invalid as applied to complainant by reason of the fact that he is given no adequate opportunity to preserve his liberty, property or constitutional rights thereunder, and this is particularly shown by reason of the facts as set forth under (1) to (5) just preceding and by reason of the further fact as shown by the records, evidence and facts of the cases under review herein and by the fact of this complaint, that he

may not determine his rights or preserve his liberty and property under this procedure even by the expenditure and deposit of large sums of money and by exhaustive and continual litigation and procedures.

The procedure of the Act unconstitutionally places the burden of proving his innocence upon complainant or upon any other person accused. Complainant has been required to serve his sentence of six months' imprisonment in full, prior to any adjudication of vital questions of law governing the case. He had to deposit $2500.00 in bail and pay the cost of the printing of numerous records, the costs of appeals, petitions for writ of certiorari and all the legal expenses incident to these procedures. Can it be doubted that if complainant had failed to pursue these procedures to finality it would be charged that he had thereby waived his right to adjudication of the validity of the Regulations as applied to him? The expenditures and losses imposed upon complainant by the Administrator in connection with the litigation involved herein exceeds $12,800.00 and has consumed months of time and personal work of which no account is taken.

The validity of an Act or Regulation is to be tested not only by what it has done but by what it can do. Thus it is often possible to show the invalidity by showing what may be done under the Act rather than by only applying it to an actual case where other considerations may becloud the issue.

Let us assume that in a case similar to that of complainant, the Administrator seeks to punish a landlord who has improved his property and thereby has established a new rent base under Section 1388:1804(d)(4) of the Regulation.

Although the landlord has committed no crime (as yet) the opportunity of the Administrator to punish him is almost limitless. After the landlord has operated under these rentals for four or five months (as complainant did) the Administrator may cause an Interpretation (or order) to be issued that would declare that the particular improvement which the landlord had made was not a major capital improvement under the particular circumstances thereof. Such an interpretation or order, valid or not, whether it was based upon previous interpretations, or entirely opposed to all previous interpretations, would still have to be recognized and enforced by the courts specified in Section 205 of the Act. Assuming that the improvements affected fifty dwelling units and that fifty registrations had been filed under the Regulation claiming such major capital improvement, the landlord could thereupon be criminally charged and convicted as a matter of routine of fifty violations under Section 205(b) of the Act for having made a statement or entry false in a material respect in a document or report required to be filed under Section 2 of the Act. His punishment for this error could be $250,000.00 fine and fifty years in jail. On these charges the landlord could offer no defense whatsoever. For making a false statement under 205(b) the punishment is applicable whether the false statement was made knowingly or wilfully or not. It is only for violations of Section 4 of the Act that an accused may interpose the defense that the violation was not a wilful violation (Tr. 200-201). This is only the beginning of the punishment of this landlord. Under 205(e) of the Act each tenant who had paid rent to this landlord in the previous

months could then bring suit for $50.00 for each alleged overcharge plus costs and attorney's fees. Even though the landlord had increased his rents as little as $1.00 per month per apartment for a period of five months or a total of $250.00, if he collected the rentals weekly the courts would be obliged to award the tenants not less than $50,000.00 plus reasonable costs and attorney's fees which would not be less than an additional $5,000.00, considering the number of cases involved. If the tenants could not be induced to sue (every effort was made by the Administrator to induce complainant's tenants to sue, but none of them did) the Administrator could bring suit on behalf of the United States (Section 205(e) of the Act). Against these suits brought either by the tenants or the Administrator the landlord could offer no defense. Lack of wrongful intent is not a defense to an action under Section 205(e) (Tr. 201-202).

The Administrator could then bring an additional criminal prosecution against the landlord for violation of Section 4(a) (the procedure adopted against complainant). On the basis of rents collected weekly, this criminal "Information" could charge 1,000 violations and the total penalty which could be assessed would be $5,000,000.00 fine and 1000 years in jail. Here for the first time the element of wilfullness could be interposed as a defense, but if the jury was instructed as was the jury in the criminal case here under consideration that—

> "Wrongful acts, knowingly or intentionally committed, cannot be justified on the ground of innocent intent." (Tr. 188 on petition for writ of certiorari, *Taylor v. U. S.*)

it is apparent that this defense would have been of no avail. The acts were wrongful by reason of the subsequent order or Interpretation of the Administrator. That the rents were intentionally and knowingly collected cannot be denied (Tr. 202).

Can any one doubt that this power to destroy a person's financial stability, appropriate his property, and imprison him for life by the issuance of an Interpretation which might be entirely contrary to all previously issued Interpretations and criminally conceived for the purpose of punishing that person—can any one doubt but that that is an unconstitutional power?

This is exactly the type of retaliation which the Administrator sought to visit upon this complainant with minor variations (Tr. 202).

Interpretation 77, designed to insure conviction of complainant, was issued December 11, 1942, the same day the criminal Information was filed against complainant. As soon as a judgment was obtained against complainant in the civil case and although the Administrator knew that an appeal would be taken therefrom, a letter was sent to each tenant for the purpose of inducing said tenant to seek refunds or bring suit for damages (Tr. 202, 225). It cannot be denied that the improvements made by complainant fill the requirements of the Interpretation defining major capital improvements. This has been admitted by responsible representatives and attorneys for the Administrator, but it has been stated to this complainant by one such attorney that they cannot admit it officially or rule that it is, because this complainant has been held up to the public as a flagrant violator and if this complainant

escapes punishment it will be hard to explain to other landlords and hard to make them obey (Tr. 202-203, 225).

Thus it is held that because the Office of Price Administration has itself deceived the public as to the facts of the case, and held this complainant up as a wilful violator of the Regulation, it cannot retract from this position notwithstanding that it is now admitted in private that complainant was correct in the establishment of his maximum rents under Section 1388:1804 (d)(4) of the Regulation and thus guiltless of any crime or violation as charged (Tr. 203, 225).

The holding up of an "example" or the desire to intimidate other landlords and deter them from asserting their rights is not constitutional or moral justification for maintaining a wrongful conviction, or for depriving this complainant of his property.

(7) Due process of law, while it may be denied as a result of one single ruling, or act, or the deprival of some one right, may also be denied by the cumulative effect of several or many deprivations or rulings, or by the existence of congeries of circumstances any one of which taken alone could not be deemed to be a denial of due process.

Even if it could be held that the objections heretofore made, taken singly, may not effect a fatal denial of due process, yet taken collectively they show a flagrant and extreme denial of such due process. One of the basic constitutional rights of the citizen is invaded and abrogated by this Act, to wit: the right to interpose the Constitution of the United States in defense of his liberty or property (Section 204(d) of the Act). Complainant concedes that

a constitutional right may be waived or it may be forfeited (*Yakus v. U. S.*, 321 U.S. 414, 64 S.Ct. 660 at 677), but complainant emphatically denies that he can be lawfully deprived thereof by legislation, for all legislation is subject to the limitations imposed thereon by the Constitution. The right of the citizen as to those rights reserved, and as to those set forth in the "Bill of Rights" is superior to any law-making power, for the people have conferred the right to make only such laws as are designated in the Constitution and to the extent that they do not violate the provisions of said Constitution.

Under the Act, complainant could object to the Regulations or orders issued by the Administrator in only one forum—the Office of Price Administration itself, and could raise questions concerning the validity thereof in only one court, the Emergency Court of Appeals, after protest to the Administrator. No orders were issued to complainant by the Administrator prior to criminal prosecution. The basic questions involved in the criminal case had not arisen within the statutory period (60 days) within which a protest could be filed against such Regulation. After such sixty days, protests could only be filed which were based solely on grounds arising after such sixty days. Thus the right to interpose the Constitution is unlawfully restricted and divided into periods of time (Tr. 203-204).

In the cases under review herein, and in the circumstances hereof, complainant was required to protest *before* he was attacked by the Administrator. After the statutory period had expired and he was so attacked in criminal and civil prosecutions, the Emergency Court of Appeals refused to accept or admit the evidence necessary

to show the unconstitutionality of the Regulations and the Act as they were being applied to complainant in such criminal and civil prosecutions. Complainant was deprived of the right to interpose the Constitution in his defense in said criminal and civil prosecutions (Tr. 204-205).

From the foregoing it is evident that complainant has been deprived of due process in that he is prosecuted in one court which may not consider the validity of an order or regulation and his rights are so circumscribed or restricted in the only forum to which he can appeal that his rights, his liberty and property are lost to him (Tr. 205).

To test the validity of a regulation or order it must be considered in the light of all the circumstances surrounding its application, whether they arise after sixty days after the issuance thereof or not, and an unconstitutional application of the regulation may not lawfully be sustained on the ground that as applied previously the regulation was held to be valid. Nor may the right of complainant be abridged, by foreclosing him from raising each and every objection to the regulation necessary to show that the present application thereof is unconstitutional, on the ground that in other circumstances and at another time those objections were overruled or were not urged. This is the apparent effect of Sections 203 and 204 of the Act, and in this respect the Act is unconstitutional (Tr. 205).

(f) The basic guarantees of the Constitution include therein as "due process of law" the right to adequate protection against being deprived by government of liberty or property in an unconstitutional manner. This right

as an essential feature thereof includes the right to offer proof before a court of competent judisdiction that he has been or is about to be deprived of such liberty or property unconstitutionally in a trial court or court of primary jurisdiction. Due process requires that such a court of review or appeal shall have full power and duty to examine into the proof offered, and upon a satisfactory showing, set aside the judgment of the court below and thereby preserve the liberty or property of the appellant from unconstitutional exertions of power. This constitutional right is denied complainant under the terms of this Act (Tr. 206).

(g) Where questions of fact only may be determined in one court and questions of law relating thereto must be determined in another court, the case may not constitutionally proceed to execution of judgment involving punishment or the appropriation of property in a criminal trial until both questions of fact and of law shall have been finally adjudicated (unless the accused waives or has forfeited the right to such adjudication) (Tr. 206).

(h) Complainant contends that where such divided jurisdiction exists, it is totally invalid as applied to a criminal trial unless the presumption of the innocence remains until after final adjudication by each of the two courts of limited jurisdiction, and unless there is provision made whereby the separate findings of these respective courts may be thereafter reviewed as a whole by a court having power over each of such courts, which review court must have the right to determine whether by the combination of fact and law under all the circumstances of the case the accused may be constitutionally punished. The Act does not permit such procedure (Tr. 206-207).

(i) Complainant contends that if questions of law involve questions of fact that the accused may not be deprived of a jury trial for purposes of determining the questions of fact upon which the validity of the law may depend. The procedural provisions of the Act deprive protestant of this constitutional trial (Tr. 207).

(j) Complainant contends that by reason of the difficulties inherent in a criminal trial divided into two primary parts, even though the findings of the first two courts could be consolidated and reviewed by a higher court, due process and the Sixth Amendment would require the availability of a jury in each of the three courts in which the trial must be first had or later consolidated, and the final verdict must be by jury in the review court after said jury is fully and correctly advised as to the law involved under the circumstances and facts surrounding the case. The Act does not permit or provide for such a constitutional trial (Tr. 207).

(k) The Review Procedure of the Act does not permit or provide for this final adjudication by a court which is competent, and is therefore invalid. A prosecution started in a District Court may go all the way to the Supreme Court of the United States and even there, no matter how flagrantly the regulation or order may be seen to violate the Act or the Constitution, the Supreme Court may not consider its validity.

Bowles v. Willingham, 64 S.Ct. 641 at 650.

(l) The Emergency Court of Appeals, on the other hand, is given no jurisdiction of criminal or enforcement cases, and if it should take cognizance thereof in determinations of questions involving validity it does so

as a matter of discretion and not because the accused has any right to demand adjudication thereof.

> "The right of a citizen to due process of law must rest upon a basis more substantial than favor or discretion."
>
> *Roller v. Holly*, 176 U. S. 398, 409.

> "The law itself must save the parties' rights and not leave them to the discretion of the courts as such."
>
> *Louisville & Nashville R. Co. v. Stockyards Co.*, 212 U. S. 132, 144.

The Act does not thus save the rights of the protestant, for it provides:

> "Upon the filing of such complaint the court shall have *exclusive jurisdiction* to set aside such regulation, order, or price schedule, in whole or in part, *to dismiss the complaint*, or to remand the proceeding:" (Part of Section 204(a) of the Act)

(m) In considering the validity of regulations as related to a criminal trial it is also necessary to consider whether the great and unquestionable power of the Administrator does not by its very freedom from review create a summary and improper attitude in the minds of judges who are asked to enforce his Regulation. A judge is required to enforce an order or regulation of the Administrator without considering whether it is valid or not. The presumption is, then, that if the Administrator seeks an enforcement decree or if he causes a criminal action to be instituted, he is entitled to a decree or a verdict as a matter of course. And this is all the more apparent because the Administrator has the power as we have

shown heretofore to create a crime by a subsequent ruling or interpretation. Or he can do as he did in complainant's case, issue an interpretation whereby complainant would be criminally liable for acts of another party, over whom complainant had no control as to such acts, and make such interpretation retroactive. This prestige or preponderance of power, or whatever it should be called, did tend to create such an attitude on the part of the judge who tried the criminal case here under review. This was shown by the impatience of the judge in hearing the defense of complainant, and the precluding of evidence which should have been put before the jury. Perhaps it was most strongly shown, however, by the judge's statement that he knew no Federal agency would bring a man into court unless it was justified. Complainant's guilt was prejudged and the court's attitude throughout the trial was clearly shown to the jury. A jury would also be inclined to suppose, that concerning facts which are undisputed, the Administrator would not cause a prosecution to be brought unless the accused was guilty. When this thought is reenforced by a parade of witnesses each hoping to obtain lower rents, by a prejudiced judge, and by a District Attorney who is permitted to ridicule the accused's legitimate defense and after an emotional appeal based on the war emergency and his own war record is permitted to close his argument by telling the jury that the defendant "admits he's guilty" (a statement without any foundation whatsoever) it is not surprising that this complainant was found guilty by the jury. The Act itself by its grant of power and by the prestige which it gives to the Administrator, has weighted

the scales against the citizen and against complainant to the extent that it constitutes a denial of due process in the courts. This is shown to a marked degree by the cases under consideration herein (Tr. 208-209).

8. The procedural requirements of the Act and regulations, including Procedural Regulation No. 3, present such difficulties and require such an extreme expenditure of time, technical skill, thought and expense that coupled with the other features of the Act and Regulation they result in depriving persons subjected thereto of their property without due process and without just compensation (Tr. 209).

(a) The provisions of and practice under Maximum Rent Regulation 28 of granting increases in rent to be effective only at the time of the first rent payment after the date of the order granting such increase, is:

1. Contrary to public policy.

2. Violative of the Fifth Amendment to the Constitution of the United States, where the improvements or increased services or conditions justifying such increase were existent in the property and in the possession and use of the tenant prior to the date of the order, and where such condition justifying the increase was existent prior to the issuance of the regulation itself.

3. *Ex post facto* in its effect where it results in the nullification of contracts entered into between the maximum rent date and the effective date of the regulation.

The foregoing is self evident. Obviously the landlord cannot be expected to provide services and equipment to

tenants without compensation. When he is expected to wait months for approval of the proper charges for such services and equipment the housing situation and the war effort is impaired. In cases where the landlord had already provided the services or equipment or the premises in question at rents improperly low previous to such adjustment or order the landlord is being deprived of the use of his property without just compensation (Tr. 209-210).

(b) The policy and practice of the Office of Price Administration and its personnel as evidenced by the procedures of Revised Procedural Regulation No. 3 and the records of petitions, protests, and other proceedings here under review and in evidence—of making such procedure as difficult and formidable as possible is a denial of due process and appears to be an unlawful attempt upon the part of the Office of Price Administration to defraud landlords and confiscate private property (Tr. 210-215).

As shown by evidence in the Transcript taken from "Hearings before the Special Committee to Investigate Executive Agencies, House of Representatives, Seventy-Eighth Congress, First Session, Pursuant to House Resolution 102 (Hearings) Part I, April 7—June 22, 1943," petitions and protests were unreasonably delayed many thousands of such petitions being more than 90 days old and still not decided (pp. 877-878), the protest procedure and remedy was inadequate (878-879), and it was the policy and intent of O.P.A. personnel to make the procedure as difficult and formidable as possible for landlords (880-894). It was also shown in said hearings that high officials

in the Office of Price Administration and who had charge of selecting personnel for the field offices were persons who had publicly condemned the Constitution of the United States and who believed and stated that "there is no place for private enterprise in the field of multiple housing" (265, 266, 760-786). They were connected with militant labor groups, in particular one whose published aim was to:

> "* * * inspire the workers to take control of industry and government, abolish the present capitalist system and build a workers' republic, and an economic system operated for the benefit of the masses and not of the few" (784).

Such high O.P.A. officials looked forward to the real war as beginning after the peace (781). It is plain that the Office has been influenced by political or sociological considerations, and that landlords as a class have been unlawfully discriminated against by reason thereof.

(9) As has been heretofore pointed out, complainant had not forfeited his rights to an adjudication of the validity of the regulation in the criminal and civil cases under consideration here.

The Supreme Court in the *Yakus* case, heretofore cited, did not uphold the procedure here complained of but held that the petitioners in that case were not in position to challenge such procedure because they had not applied it, and could not show that if they had, any of the consequences which they apprehended would have ensued to any extent whatever—

> "or if they should, that the statute withholds judicial remedies adequate to protect petitioners' rights." (Under Headnote 10.)

The Court further stated as indicative of its views of the proper attitude to be taken by the Administrator toward a protestant who sought relief by the procedure set up in the Act:

> "But while courts have no power to suspend or ameliorate the operation of a regulation during the pendency of proceedings to determine the validity, we cannot say that the Administrator has no such power or assume that he would not exercise it in an appropriate case." (Under Headnote 14.)

How different the attitude and actions of the Administrator as evidenced by this case! Here every effort was made to harass complainant and to overwhelm him with local litigation and confine him to prison while he was endeavoring to obtain a determination of the validity of the regulations and a determination of what his maximum rents were under the regulation!

How apt to this situation the words of Mr. Justice Roberts in the *Bowles v. Willingham* case heretofore cited!

> "Without further elaboration it is plain that this Act creates personal government by a petty tyrant instead of government by law."
>
> (64 S.Ct. 657.)

XVI.

CONCLUSION

In conclusion, this Court is respectfully referred to the Opinion of Mr. Justice Roberts in the *Yakus* and *Rottenberg* cases, heretofore cited. This able jurist, since retired, stated:

> **"When these cumulative burdens placed upon the protestant who seeks review are fairly appraised it becomes apparent that he must carry an insupportable load, and that, in truth, the court review is a solemn farce in which the Emergency Court of Appeals, and this court, on certiorari, must go through a series of motions which look like judicial review but in fact are nothing but a catalogue of reasons why, under the scheme of the Act, the courts are unable to say that the Administrator has exceeded the discretion vested in him."**

The Honorable Mr. Justice Roberts had made a scholarly and exhaustive study of the practical effect of these procedures as evidenced by actual cases. Mr. Justice Rutledge and Mr. Justice Murphy construed the procedure as applied to criminal trials. All three held the procedure totally invalid especially as relating to a criminal trial.

These views of the dissenting justices as to the inadequacy of this procedure to test the validity of Regulations in a criminal trial, stand unrefuted by the majority opinion which, to repeat, did not consider the matter, holding that it was a question that was not before them in the *Yakus* and *Rottenberg* cases.

Judgment should be entered in favor of complainant in accordance with the "Relief Requested" in the complaint (p. 51).

San Francisco, Calif., March 21, 1946.

Respectfully submitted,

STANLEY W. TAYLOR
1201 Fulton Street
San Francisco (17) Calif.
Complainant in Propria Persona.

(APPENDIX FOLLOWS)

SAN FRANCISCO, CALIF.
SEP 28 1946
STANLEY W. TAYLOR

Appendix

QUESTIONS PRESENTED ON THE MAJOR CAPITAL IMPROVEMENTS

1. Had protestant the right to rely upon the provisions of Sec. 1388:1804(d) 4 and Official O.P.A. Interpretation 5(a)(1)-I in the determination as to whether the maximum rents at 530 Larkin Street were the first rents after the installation of the laundry equipment installed therein, together with the incidental and necessary structural changes and additions, on June 27, 1942?

2. Were there any other standards or regulations by which protestant could have determined with certainty whether the laundry equipment and attendant structural changes and additions did or did not constitute a "major capital improvement" within the meaning of the Regulation fixing the maximum rent?

(a) If so, what were they?

(b) Could they have been reasonably applied in such a manner and within such a time that protestant could adjust his rents pursuant thereto on July 1, 1942, at which time the Regulation became effective?

3. Was the installation of the laundry equipment together with installation of plumbing, wiring, etc., different from "ordinary repair, replacement and maintenance"?

4. Was such installation a capital improvement?

5. Is there any standard in the Regulation or was there any Official Interpretation in existence and readily available to protestant or the general public defining:

(a) What was meant by "major" in the Regulation?

(b) What was meant by "substantially changed" in the Regulation?

6. Would the addition or installation at any expense of any new permanent fixture or new facility where there had been none before be a capital improvement if such fixture was of service or value?

(a) Does the word "major" apply with certainty to "capital" denoting how much money is involved?

(b) Does the word "major" apply to "improvement" denoting that the improvement is not to be trivial in its value?

(c) Does the word "major" denote the physical size of the improvement?

(d) It there anything in the Regulation by which it could have been determined with certainty that the laundry equipment, plumbing and wiring, installed at a cost of $500.00 was not a major expenditure or a major improvement or a major capital improvement?

7. Did protestant have a right to rely upon the following definition of what constitutes

"a substantial change by major capital improvement"

which is found in Official O.P.A. Interpretation 5(a)(1)-I, to-wit:

> "If the improvement has resulted in some added feature which did not exist prior to the change of a kind which would normally result in an increase in the rental value, *then it would be a substantial change by a major capital improvement*"?

8. Did the installation of sewer line, hot and cold water lines and electric lines in the premises at 530

Larkin Street to serve the area made available for the use of the laundry equipment, and which area had not been previously served with such plumbing or electricity comply reasonably to the examples set forth in Interpretation 5(a)(1)-I, to-wit:

> "such as . . . the installation of plumbing, heating or electricity where such facilities did not previously exist?"

9. Did the statement in the Interpretation,

> "The addition need not necessarily be a part of the structure, but might also include a new garage or the installation of sidewalks,"

support protestant's contention that the laundry equipment and plumbing need not necessarily be a part of or installed in each individual apartment to constitute a substantial change by a major capital improvement?

10. Was it unreasonable in the light of the Regulation and Interpretation 5(a)(1)-I, for protestant to conclude that the laundry equipment (together with plumbing, electrical and structural changes necessary to its installation) was a major capital improvement?

11. On what grounds (if any) could such a conclusion in (10) above be held to be unreasonable with certainty?

12. (a) If the laundry equipment was classified as a major capital improvement and had been recognized as such on July 1, 1942, did the Administrator have authority under the Regulation to see that no inflationary or unwarranted increases in rents resulted therefrom at 530 Larkin Street?

(b) Was it inconsistent with the purposes of the Act for protestant to provide this laundry equipment for the tenants at 530 Larkin Street?

(c) If the equipment were so provided and recognized as a major capital improvement fixing the first rents thereafter as the maximum legal rentals could protestant lawfully (under the Regulation) deprive the tenants of the use thereof after July 1, 1942, without the consent of the Administrator or without making himself liable to a reduction in rent under the Regulation?

(d) Would any person be unlawfully deprived of any substantial right if such equipment had been recognized as a major capital improvement on July 1, 1942?

13. (a) If the laundry equipment had been determined by protestant not to be a major capital improvement on June 30, 1942, when the Regulation was issued, was there any reasonable procedure or method whereby protestant could under the Regulation obtain compensation for the tenants' use thereof on July 1, 1942, and on each succeeding day, or in the rentals collected on July 1, 1942, and thereafter in each succeeding day and month?

(b) Would it have been consistent with the purposes of the Act for protestant to deprive the tenants of the use of the laundry equipment (many of them having been promised the use thereof as an inducement to move into the premises, and the laundry situation in San Francisco being very bad at that time)?

(c) Would it have been consistent with the purposes of the Act to require protestant to continue providing the use of the laundry equipment for many months without compensation?

(d) Would it have been consistent with the purposes of the Act to compel protestant and the Administrator and the tenants to occupy their time, thought and energies in the filing and disposition of forty-eight petitions for increased rents when by recognition of such an improvement as a major capital improvement such energies could be devoted to more useful purposes connected with the war effort and the government would not only have been saved expense but would be benefited because as a going concern the apartment house would have produced revenue for the government in income tax?

14. (a) Where the one construction of the Regulation resulted in a condition where protestant was deprived of compensation for the facilities furnished, and the other provided adequate relief and remedy for all persons and did provide compensation for the facilities furnished, wasn't the latter construction the most reasonable one to be adopted?

(b) Which construction of the Regulation,—that the laundry equipment does constitute a major capital improvement, or that it does not constitute a major capital improvement most nearly conforms with the basic law of the land, the Constitution and accepted principles of law and construction?

15. Are the terms of the Regulation itself so clear and certain in excluding the laundry equipment, etc., as to make it impossible for any reasonable man of common intelligence to conclude that such equipment is a major capital improvement and that his rents are fixed thereby, under the Regulation?

16. Are the terms and definitions of the Interpretation so clear and certain in excluding the laundry equipment, etc., as a major capital improvement as to make it impossible for any reasonable man of common intelligence to conclude that such equipment complies therewith as effecting "a substantial change by a major capital improvement"?

17. Is the Regulation or Interpretation unlawfully vague and uncertain as a Regulation or Interpretation, violation of which is a crime and punishable as such?

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In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 558

STANLEY W. TAYLOR,
Petitioner,

vs.

PAUL A. PORTER, Price Administrator, Office of Price Administration,
Respondent.

On Petition for Writ of Certiorari to the United States Emergency Court of Appeals

Motion for Appointment of Counsel and for Other Relief

STANLEY W. TAYLOR,
1201 Fulton St.
San Francisco (17), Calif.
Petitioner in Propria Persona.

PARKER PRINTING COMPANY, 545 SANSOME STREET, SAN FRANCISCO

In the Supreme Court of the United States

OCTOBER TERM, 1946

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Respondent.

On Petition for Writ of Certiorari to the United States Emergency Court of Appeals

Motion for Appointment of Counsel and for Other Relief

To the Honorable Frederick Moore Vinson, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

Comes now Stanley W. Taylor, your petitioner in the above entitled cause, and respectfully moves the Court:

1. That this Honorable Court appoint counsel, in whom the Court may have confidence, to represent your peti-

tioner herein in the event that the petition for certiorari is opposed and it appears to the Court that petitioner should have counsel to adequately present his cause.

2. That your petitioner be not required to print the record herein, or that he be required to print only such portions thereof as the Court or the Honorable Clerk thereof may deem absolutely necessary.

3. That in the event this Honorable Court does appoint counsel, such time as to the Court may seem just and proper be allowed such counsel to study the case and to thereafter amend the Petition herein or add thereto or file a brief in support thereof or to take such other steps in furtherance of petitioner's cause as such counsel may deem appropriate.

4. That petitioner be permitted to file twenty copies of his printed *Exhibit to Petition*, the rules of the Court notwithstanding. (If additional copies are desired it is possible that they may be obtained from the Clerk of the Emergency Court.)

In support of his motion petitioner respectfully states and represents as follows:

I.

The above entitled cause constitutes your petitioner's defense on constitutional grounds in the criminal case of *U. S. v. Taylor*, No. 27815-S, U.S. Dist. Ct. No. Dist. Calif., So. Div. (Tr. 2-3).

Your petitioner, while not a pauper, has nevertheless been compelled to represent himself herein and in the proceedings precedent hereto by reason of the fact that he cannot afford to employ counsel.

Your petitioner fell in disfavor with respondent as a result of an earlier protest filed by petitioner on August 27, 1942, and since November 9, 1942 has been restrained by respondent and prevented by respondent from collecting what petitioner deems to be the proper rentals under the regulation in question (Tr. 78-80, 184 186). By reason of the foregoing, petitioner was compelled to operate his property at a loss for two years and petitioner and his wife were compelled to provide their own services in such operation without compensation (Tr. 82). Expenditures and losses imposed upon petitioner by respondent, in connection with the litigation here involved, exceeded $12,800.00 on August 1, 1944, the date of filing of the protest precedent hereto. Petitioner has also been compelled to devote months of time and personal effort in connection with such litigation (Tr. 200).

As a result of the above conditions petitioner has been compelled to go heavily into debt in order that he may attend to the necessary expenses involved in his defense.

II.

The record in the instant case comprises approximately 2000 pages of which 359 pages (exclusive of the opinion) are already printed in form acceptable in this Court (Tr. 1-359). Petitioner has, throughout the proceedings, endeavored to obtain stipulations as to facts so as to avoid unnecessary proof and affirms that the record is unnecessarily long because of the refusal of respondent to consider any stipulation of facts or of documents (Tr. 57, 250, 425-428).

1600 pages of evidence, documentary proof, and exhibits, originally filed by petitioner in the protest proceedings and

officially admitted as evidence both before the administrator and in the Emergency Court, have not been filed in this Court with the Certified Transcript. This is a result of the fact that the Emergency Court over the objection of petitioner permitted respondent to file so few copies of such documents and exhibits that upon application of petitioner the Clerk of the Emergency Court was unable to provide a complete transcript of this evidence (Petition, Appendix (1), Tr. 421-429).

Your petitioner believes that in view of the undisputed state of the record (Tr. 1-359) there is enough evidence there set forth to disclose to this Honorable Court that certiorari should be granted. In any case it appears to petitioner that it would be an injustice to compel petitioner to now print the remainder of the record under the circumstances above stated.

Your petitioner believes (though he may be over-optimistic) that when and if certiorari is granted respondent will be more amenable in the matter of stipulating on the record.

Petitioner is able to supply up to twenty mimeographed copies of the complaint (Tr. 361-413) in size and form similar to the one in the certified transcript and is also able to supply some few printed volumes of other exhibits. In the case of some exhibits, however, petitioner has only one copy.

It is respectfully suggested that the settling of the record be deferred until after the Court has acted upon the Petition.

III.

By reason of the complexity of the case and the many issues involved, it would obviously take some time for

counsel unfamiliar with the case to study and digest it. Thus if counsel is appointed by this Court, it is respectfully suggested that thirty days be allowed such counsel to amend the Petition herein or to take such other action as may be appropriate.

IV.

Petitioner believes that his *Exhibit to Petition* will be useful to the Court in its consideration of the instant case, but petitioner is unable to provide 40 copies.

Dated, San Francisco, California,
September 28, 1946.

Respectfully submitted,

STANLEY W. TAYLOR
1201 Fulton St.
San Francisco (17), Calif.
Petitioner in Propria Persona

INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	2
Statute and regulations involved	2
Statement	2
Argument	7
Conclusion	8

CITATIONS

Cases:	
Bowles v. *Taylor*, Civil No. 22364W. (N. D. Calif.,1943)	4
Bowles v. *Willingham*, 321 U. S. 503	6
Taylor v. *Bowles*, 147 F. (2d) 824	4
Taylor v. *Brown*, 137 F. (2d) 654 certiorari denied, 320 U. S. 787	5, 6
Taylor v. *United States*, 142 F. (2d) 808, certiorari denied, 323 U. S. 723, rehearing denied, 323 U. S. 813	4, 6
United States v. *Taylor*, No. 27815S. (N. D. Calif., 1943)	4
Yakus v. *United States*, 321 U. S. 414	6
Statute and Regulations:	
Emergency Price Control Act of 1942, as amended, 50 U. S. C. App., Supp. V, 901:	
Section 4 (d)	7
Rent Regulation for Housing	2
Section 4 (a)	3
Section 4 (d) (3) and 4 (d) (4)	3
Revised Procedural Regulation No. 3	3

720248—46

In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 558

STANLEY W. TAYLOR, PETITIONER

v.

PAUL A. PORTER, PRICE ADMINISTRATOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the United States Emergency Court of Appeals (R. 462–468) is reported in 156 F. (2d) 805.

JURISDICTION

The judgment of the Emergency Court of Appeals was entered on July 31, 1946 (R. 469). A petition for rehearing was denied on September 4, 1946 (R. 473). The petition for a writ of certiorari was filed in this Court on October 2, 1946. The jurisdiction of this Court is invoked under Section 204 (d) of the Emergency Price

Control Act, 56 Stat. 23, 50 U. S. C. App., Supp. V, § 924 (d) (referred to herein as the "Act"), making applicable Section 240 of the Judicial Code, as amended (28 U. S. C. 347).

QUESTIONS PRESENTED

1. Whether the provisions of the Act concerning judicial review violate the Fifth Amendment.

2. Whether Sections 4 (a), 4 (d) (3), 4 (d) (4), 5 (d) and 6 of the Rent Regulation for Housing are invalid.

3. Whether certain official administrative interpretations of the Rent Regulation are improper.

STATUTE AND REGULATIONS INVOLVED

The pertinent provisions of the Emergency Price Control Act of 1942, as amended, are set forth in 50 U. S. C. App., Supp. V, §§ 901 *et seq.* The Rent Regulation for Housing and Revised Procedural Regulation No. 3 appear in the Federal Register (7 F. R. 4913, 8 F. R. 7322; 8 F. R. 526).

STATEMENT

Petitioner is the owner of an apartment building located at 530 Larkin Street, San Francisco, California (R. 1, 162). For such housing accommodations rented on March 1, 1942, in the San Francisco Bay Defense-Rental Area, Maximum Rent Regulation No. 28[1] provides that the max-

[1] 7 F. R. 4913, issued June 30, 1942, effective July 1, 1942. This regulation was subsequently redesignated Rent Regulation for Housing, 8 F. R. 7322.

imum rent is the rent demanded or received by the landlord on that date. However, if the accommodations were changed from fully furnished to unfurnished, or were substantially changed by a major capital improvement after March 1, 1942, but prior to July 1, 1942, the maximum rent is the first rent after such change.[2]

Petitioner, proceeding on the assumption that the installation of a washing machine and the transfer of the furnishings in the apartments to his managing agent brought him within Sections 4 (d) (3) and 4 (d) (4) of the Regulation, exacted rentals for his apartments in excess of those in effect on March 1, 1942 (R. 94–95). Two proceedings were instituted against petitioner in the United States District Court for the Northern District of California, one for an injunction and

---

[2] The sections in question provide as follows:

Section 4. Maximum Rents. Maximum rents (unless and until changed by the Administrator as provided in section 5) shall be:

(a) For housing accommodations rented on the maximum rent date, the rent for such accommodations on that date.

* * * * *

(d) For * * * (3) housing accommodations changed between those dates [after the maximum rent date and before the effective date of regulation] from unfurnished to fully furnished, or from fully furnished to unfurnished, or (4) housing accommodations substantially changed between those dates by a major capital improvement as distinguished from ordinary repair, replacement and maintenance, the first rent for such accommodations after such construction or change: * * *

the other a criminal proceeding for wilful violation of the Regulation. An injunction was issued in the civil proceeding.[3] A verdict of guilty was returned by the jury in the criminal proceeding.[4] The judgments in both the criminal and civil actions were affirmed by the Circuit Court of Appeals for the Ninth Circuit.[5] A petition for a writ of certiorari to review the judgment in the criminal action was subsequently denied by this Court, and a petition for rehearing was also denied.[6] Petitioner has already served the term of imprisonment to which he was sentenced (R. 145–146, 225).

In the proceedings referred to above, petitioner contended, *inter alia,* that the review provisions of the Act were unconstitutional because they did not afford him adequate opportunity to test the validity of the Act and the Regulation before he was tried and convicted; and that the Sections of the Regulation upon which the enforcement actions were based were void for indefiniteness. However, in 1942, petitioner, prior to the institution of the criminal and civil proceedings against him, filed a protest against the Act

[3] *Bowles* v. *Taylor*, Civil No. 22364 W. (N. D. Calif., 1943).

[4] *United States* v. *Taylor*, No. 27815 S. (N. D. Calif., 1943).

[5] *Taylor* v. *United States*, 142 F. (2d) 808 (C. C. A. 9.); *Taylor* v. *Bowles*, 147 F. (2d) 824 (C. C. A. 9).

[6] *Taylor* v. *United States*, 323 U. S. 723, rehearing denied, 323 U. S. 813.

and the Regulation. This protest was denied by the Price Administrator, and petitioner's ensuing complaint filed with the Emergency Court of Appeals was dismissed on July 15, 1943,[7] long before the time when the judgments in the enforcement proceedings became final.

The questions presented by the petitioner in the instant case before the Emergency Court of Appeals were substantially the same as those theretofore decided by the Circuit Court of Appeals for the Ninth Circuit in 1944 and 1945 and the Emergency Court of Appeals in 1943. Essentially, the court below was asked to pass upon four groups of claims, namely: (1) that the Act is unconstitutional; (2) that the Rent Regulation is invalid; (3) that the Administrator's interpretations of the Rent Regulation are confusing and misleading; and (4) that the decisions of the District Court and Circuit Court of Appeals were erroneous (R. 462–468).

The contention most strenuously advanced by petitioner in the court below was that the Act offended the Fifth Amendment because, under its review provisions, particularly as to exclusive jurisdiction, it was possible for a defendant in a criminal case to be convicted of violation of a regulation by an enforcement court bound to assume its validity, before the petitioner could secure a

[7] *Taylor* v. *Brown*, 137 F. (2d) 654 (E. C. A.), certiorari denied, 320 U. S. 787.

determination of validity by the Emergency Court, even though he was diligently seeking to do so (R. 361–413). Petitioner contended that this was precisely what happened to him and that he was not precluded by the decisions of this Court from raising this issue, because *Yakus* v. *United States,* 321 U. S. 414, expressly left it undecided.

The Emergency Court of Appeals held that this contention was not open to the petitioner because, *inter alia,* his case did not come within the area left open for decision in the *Yakus* case, and that, in any event, petitioner had raised various constitutional questions in the District Court and the Circuit Court of Appeals, which were decided adversely to him and that petitioner raised this very contention in his petition for a writ of certiorari to review the decision of the Circuit Court of Appeals which was denied by this Court. *Taylor* v. *United States,* 323 U. S. 723, rehearing denied, 323 U. S. 813.

The remaining objections leveled at the statute by petitioner were disposed of on the ground that they had been passed upon adversely to the petitioner either by this Court in *Yakus* v. *United States, supra,* and *Bowles* v. *Willingham,* 321 U. S. 503, or by the Emergency Court of Appeals in *Taylor* v. *Brown,* 137 F. (2d) 654 (E. C. A.), certiorari denied, 320 U. S. 787.

Petitioner's arguments that certain provisions of the Rent Regulation are vague and uncertain were also held to be without merit. The contention that the Regulation is invalid because it compels petitioner to offer his accommodations for rent, in violation of Section 4 (d) of the Act, was rejected as was the claim that the Regulation was not generally fair and equitable. Objections to the propriety of certain official administrative interpretations were likewise rejected. Finally, the Emergency Court of Appeals pointed out that it could not consider the contention that errors had been committed by the District Court and the Circuit Court of Appeals in the enforcement proceedings involving petitioner; that such contention could be advanced only in the course of the normal appellate procedure prescribed by law; and that petitioner had in fact invoked this procedure to the full and was bound by the results, however adverse they might be.

ARGUMENT

The petitioner prays that certiorari be granted in order that this Court may decide at least the 16 questions listed in the petition (Pet. 6–10). Review of the decision of the court below is not warranted, however, because these questions either have already been decided adversely to petitioner by this Court,[8] and by the Circuit Court of Ap-

[8] In this category are the questions designated in the petition as 4, 5, 6, and 7 (Pet. 7–8).

peals for the Ninth Circuit and the United States Emergency Court of Appeals in cases in which this Court denied certiorari,[9] or are without substantial significance in federal law.[10]

CONCLUSION

The decision below is correct and does not warrant further review. The petition should therefore be denied.

Respectfully submitted.

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NOVEMBER 1946.

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[9] In this category are the questions designated in the petition as 1, 2, 3, 4, 8, 9, 10, 11, 12, 14, 15, and 16 (Pet. 6–10).

[10] In this category are the questions designated in the petition as 11, 12, and 13 (Pet. 9–10) which were also clearly decided correctly by the court below; and with respect to question designated 13, the petitioner concedes that the refusal of the Emergency Court to review decisions of other federal courts was correct, therefore raising no question warranting review.

U. S. GOVERNMENT PRINTING OFFICE: 1946